

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY,
AUGUST 3, 2004

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS,	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

MARY NAGELHOUT
LORI MUNROE

(This transcript constitutes the minutes from the Public Meeting held on August 3, 2004.)

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ADJOURN:

Geoffrey Griffis130

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P R O C E E D I N G S

(2:28 p.m.)

MR. GRIFFIS: Very well. Good morning, ladies and gentlemen. Let me call to order the 3rd of August, 2004 Public Meeting of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me this morning is the Vice Chair, Ms. Miller. Also our esteemed member, Mr. Etherly, will join us. He is not sitting on the first case for decision this morning, but will join us right after that. Representing National Capital Planning Commission for the majority of cases is Mr. Mann, and representing on several of the cases with us this morning is Mr. Hood from the Zoning Commission.

Copies of today=s hearing agenda are available for you. They are located on the wall. You will need to pick one up because several things; we are not going to follow the listed agenda, and I will run through exactly how we=re going to proceed this morning. But first let me say, of course, this is our Pubic Meeting.

There is no additional testimony or time for interaction with the Board. This is the time, of course, where we pick up the cases that have already been heard. The record is closed on all of these, and we will deliberate on each of the cases of that which

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1 we=ve heard, and make decisions.

2 Also, to that, of course, having sat through
3 the cases, and you are here to hear decisions on cases,
4 you know that we are recorded in two fashions. With
5 that, of course, the Court Reporter is setting up the
6 transcript. I would ask that everyone turn off cell
7 phones and beepers so that we don=t have disruptions in
8 the transmission be it into the court reporter, or our
9 second way of recording is being broadcast live on the
10 Office of Zoning=s website.

11 Let me apologize to the Board for starting off
12 early, and believe me, I can empathize with sitting
13 around waiting for a Board to come out and get to
14 business, but I also want to assure everyone that the
15 time we utilize in Executive Session is very important,
16 and I think all will agree it is more important to come
17 out prepared and fully informed with a review of the
18 entire case so that you will have excellent
19 deliberative process and decisions. So if we needed an
20 extra hour, I hope you understand the reasoning for
21 that.

22 Let me set the schedule for th is morning so
23 everyone understands what we are going to do. First,
24 we are going to hear our deliberate on Application
25 17192, which is the National Capital Revitalization

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1 Corporation. Second, we will move to a minor
2 modification of 16959 that was put in. Third, we will
3 go to Application 17170, which is Georgetown Day
4 School. That=s number three. Fourth will be a Motion
5 for Reconsideration of Condition, of Application 17165,
6 and that is Public Storage, Inc. Five, we will then go
7 to Application 17177, Debra Moss. Six will be
8 Application 17196, Sam Daley-Harris, and seven will be
9 Application 17175 of Douglas Development Corp/Jemal=s
10 Wheel, LLC.

11 We will be taking a lunch break briefly.
12 Actually, we will continue doing some work during our
13 lunch session, and so we=ll need that. I imagine we
14 will probably be breaking somewhere after case number
15 four, which is the Motion for Reconsideration and case
16 number five. So we=ll see how quickly we get through.

17 Perhaps we can make it quite a bit through that list,
18 and I hope everyone understands and doesn=t get too put
19 off by that.

20 Let me say first of all, or additionally, this
21 is our last session of this year - not our fiscal year.

22 We do not meet in August. The 3rd of August we only
23 have Public Meeting. We do not set cases. We will
24 begin again in September, and I want to just take a
25 quick moment of everyone=s time just to reflect on

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1 what=s happened in this past year.

2 In 2003 fiscal year, which actually runs from
3 October to October, this Board heard 177 cases. So far
4 in 2004, we have heard over 185 cases, and our year is
5 not over yet. We have done written decisions on 111
6 cases this year. We have met every Tuesday, barring
7 one snow day, and we have processed anywhere from four
8 to eleven cases on the Tuesdays that we meet. On 189
9 cases so far, we have been brought to the Court of
10 Appeals four times. In the four cases that are
11 referred to the Court of Appeals, two are still
12 pending, one was dismissed summarily, and one was
13 upheld, meaning the BZA did the right thing. We=ll see
14 what happens on the other two.

15 I say that because I think it=s important for
16 us to reflect, and for everyone to really understand
17 that the Board when it comes together is, in fact,
18 increasing every single year the number of cases. We
19 haven=t increased our hearing days - Tuesdays are our
20 days - but we have been able to process more and more.

21 If we reflect back from 2001, you see, we may be
22 ending up doubling the amount of cases that the Board
23 processes. And I found just in my short tenure on the
24 Board, that they=re actually not getting easier. In
25 fact, most are getting more complicated. So not only

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1 do we increase the number, but the complication and our
2 attention, and the complexity. And, frankly,
3 oftentimes the opposition that comes in in a lot of
4 these cases has been increased. So that being said, I
5 think it=s been an excellent year, and let=s continue
6 on and finish it off just as well.

7 So with that, let=s call the first case for
8 the decision Public Meeting this morning, Application
9 17192.

10 MS. BAILEY: Mr. Chairman, Members of the
11 Board, good morning. As you indicated, this is
12 Application 17192 of the National Capital
13 Revitalization Corporation, pursuant to 11 DCMR 3104.1,
14 for special exceptions pursuant to sections 353 under
15 the New Residential Development provision, and 2516,
16 the Theoretical Lots provision, and pursuant to 11 DCMR
17 3103.2, a variance from the floor area ratio
18 requirements under Section 402, a variance from the lot
19 occupancy requirements under Section 403, a variance
20 from the rear yard requirements under Section 404, and
21 a variance from the Theoretical Lot requirements under
22 Subsection 2516.5(b), to construct 209 single-family
23 row dwellings in the R-5-A District. The property is
24 bounded by Fort Lincoln Drive, N.E., 31st Place, N.E.,
25 South Dakota Avenue, N.E., and 33rd Place. The property

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1 is also known as Square 4325, Lots 38, 39, and 40.

2 Members of the Board, this case was presented
3 on July 20th. The Board has set today, August 3rd, for
4 its decision. The decision is now pending before the
5 Board at this time.

6 MR. GRIFFIS: Excellent. Thank you very much,
7 Ms. Bailey. Board I know fully understands and has
8 gone through this case, and it is very complicated.

9 First of all, we have over 200 lots involved
10 in this specific application, and they're coming in for
11 a variety of relief from variances for the rear yard,
12 lot occupancy, front yard setbacks, to variances
13 perhaps even from 2516, which is a principal building
14 on a single lot. We have special exceptions also under
15 353.

16 We have a supplemental report based on the
17 additional information that was submitted, supplemental
18 report from the Office of Planning, that I think was
19 very well put together, and very quickly put together.

20 And I think it's important actually to go to the
21 Office of Planning's first report in our deliberation
22 on this, and look at their supplemental as it folds
23 into the additional information.

24 At this time, I am of the belief, first of all
25 and fundamentally, that this is an excellent project

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1 that this Board should in its capacity support. I
2 believe I can speak as an individual that the
3 development on this site is an excellent opportunity,
4 and should be done. And I do not want to stand in the
5 way of having this completed and coming to fruition.

6 However, in light of that, there are
7 responsibilities that the Board obviously has to
8 uphold. And in that, also needs to pay specific
9 attention to the tests of which the relief is coming
10 in, and to the larger picture in terms of the context
11 of the development and how it will impact some of the
12 surrounding areas, and whether the relief CB I mean,
13 really the third test goes to whether relief, if
14 granted, would impair the intent and integrity of the
15 zone plan and map. And I think that=s a critical
16 factor within this, not only the uniqueness/practical
17 difficulty aspect.

18 As we jump in, I=d like to hear from everybody
19 to get a little bit of discourse, as I really fall back
20 on the idea that I believe it=s important for this to
21 continue on and to come to fruition. I also feel that
22 the relief for variance, the test has not been
23 sufficiently made. And, therefore, I would submit to
24 the Board we have several options in our discussion.

25 First of all, we could open the record on this

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1 and continue the hearings on this, and we can set that
2 for some date very soon - perhaps September/October.
3 We can check our schedule. Or we go to the
4 deliberation on the application that=s before us, and
5 the record is sufficient to deliberate on that and make
6 a decision today. Obviously, the three options are
7 one, continue this; two would be approval, or three
8 would be denial. So with that, let me open it up to
9 other comments, and then I can get back to it.

10 MS. MILLER: Mr. Chairman, I would support
11 continuing this case. If we were to decide it today, I
12 would have to vote to deny the application for the
13 variance because I don=t believe that the Applicant has
14 met the test; in particular, the practical difficulty
15 test. There=s a lot of discussion about the topography
16 and the practical difficulty in complying with the
17 zoning regulations because of the topography, but I
18 didn=t think that was really fleshed out. I really
19 wasn=t convinced that there weren=t other ways to try
20 to deal with the topography.

21 And I think that Office of Planning has done
22 an awful lot of good analysis on this case, both in
23 their original report and in their supplemental. And I
24 think it would be a good idea if in the next month or
25 so, if the Applicant could work with the Office of

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1 Planning and try to work out another design or justify
2 better how it meets the test. Because, again, I think
3 this is a development concept worth supporting, but we
4 can=t just grant a variance on that basis.

5 MR. GRIFFIS: Good, thank you. And as we look
6 at 2516, of which they are under - 2516.1, obviously
7 allows this Board to approve for special exception one
8 or more principal buildings on a single record lot.
9 That=s not the exact reading of it, but it has to
10 comply with all of 2516.

11 I think the critical aspects in 2516 in
12 following up what you=re saying is that, one, it needs
13 to be before final action referred to the Office of
14 Planning for coordination review, and a report. Now
15 we=ve satisfied the letter of the regulation with that,
16 but in looking at the supplemental report of the
17 numerous conditions that the Office of Planning has put
18 on it, I think that there is room, and it is still
19 viable to continue that coordination with the Office of
20 Planning.

21 Now the other important and critical aspect of
22 2516 is 2516.11, in which the Board has jurisdiction to
23 impose conditions with respect to size, location of
24 driveways, net density, height, design, screening,
25 location of structures, and any other matter that the

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1 Board determines are required to protect the overall
2 purpose and intent of the zoning regulations.

3 Let me see, we've got whole design
4 jurisdiction here, which is fascinating. And I'll be
5 more serious. The other CB if you pull those two
6 together, the Board and Office of Planning, one of the
7 aspects of 2516 indicates that the relationship of the
8 proposed development to the overall purpose and intent
9 of the zoning regulations, and other planning
10 considerations for the area in the District of Columbia
11 as a whole, need to be taken into account. So not only
12 do we look at the specific lot and how it's being dealt
13 with, but how does it fit into everything else.

14 Why am I saying all this? I think one of my
15 concerns in looking at this, first of all, is the lot
16 sizes themselves have been proposed and I think are
17 appropriate. However, I'm not sure that they have to
18 be so static. I'm not sure they have to be so rigid in
19 terms of the layout and the actual specific location;
20 meaning, a lot of the impact or a lot of the variances
21 have come out of the fact that these are very regulated
22 lots that are just essentially, theoretically are
23 plotted onto this site.

24 My point being, I think further revisions need
25 to be taken. One, how the roads are actually laid out.

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1 Can the roads adjust slightly in order to give more
2 room for the subdivision, so that they would reduce -
3 of course, they become large - they would reduce any of
4 the lot occupancy variances they might need, or the
5 proportion of the lot occupancy.

6 Additionally, they may do away with some of
7 the open space relief that=s being requested.
8 Likewise, there is some interstitial space. Now I know
9 the Board is fully well aware that there is areas that
10 have dramatic slope, that obviously would not or could
11 not CB it would not make sense to try and put a
12 structure on. And I can remove those from this
13 comment, but there=s interstitial space, green space
14 in-between a lot of these lots that maybe could be
15 incorporated into private ownership. And, frankly,
16 there might be two bonuses to that. One, they would be
17 controlled, and maintained, and taken care of.
18 Secondly, they would increase again the lot sizes and
19 that would diminish the lot occupancy and open space
20 requirement.

21 Also, I do not think it is such a bad idea to
22 look at how the inner-roads, basically the cul-de-sacs
23 that have been created here - how they might actually
24 connect to the surrounding streets; South Dakota, Fort
25 Lincoln and 31st Place. Now there is a single entrance

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1 and exit on each of these, and two on Fort Lincoln, and
2 I understand that. But perhaps in looking at how the
3 specific locations of the drive aisles, the ingress and
4 egress of the vehicles is laid out, may well help in
5 not doing a dramatic redesign, but may well move some
6 of the lots into an area that, in fact, makes them more
7 accommodating to the required zoning.

8 And also, again, I think it may fit better
9 into the development that=s happening overall, and not
10 creating future traffic conditions that may be adverse
11 to the area and to this specific project. I think that
12 one of the greatest things about Washington, D.C. is
13 the grid pattern of the streets. And as you drive
14 through the streets, you have at least two options, if
15 not four or five options of going different directions.

16 The difficulty we always have is when we have these
17 arterial streets that feed the major roadways, and so
18 you have backups trying to get on to one road that=s
19 going one direction.

20 Perhaps I=m going too far into the larger
21 planning aspects of it, but if you can diffuse the
22 traffic, if you can move it in and out of this area, I
23 think it would be certainly better for the specific
24 owners, the future owners of these townhouses, but also
25 for the surrounding area. I think that also goes to,

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1 and maybe I'm reading into it, but it also seems to go
2 to some of Office of Planning's concern of not making
3 this a gated community, and really moving this to
4 integrate into the rest of what's going to happen. I
5 mean, here there's not only the opportunity, what this
6 is doing is creating a neighborhood, if not several
7 neighborhoods. All that's before this group, and I
8 think I can say with the National Capital
9 Revitalization Corporation as having jurisdiction over
10 this, the amount of control and possibilities, I think
11 has increased in terms of coordinating with D.C.
12 Department of Transportation in terms of the roadways.

13 All of these groups should be working together, as
14 opposed to if you were trying to do this as a private
15 ownership and having to move government agencies to do
16 these things.

17 I think that has a much bigger opportunity to
18 really do this, and to do this very successfully. And
19 I think we're getting to that point, but I think it's
20 always difficult for this Board, I know, to continue
21 things and make things last longer than they should in
22 terms of approval processes, but I think on this one it
23 is critical to make sure that what we have jurisdiction
24 over, and there's other pieces that are coming, but
25 what we have jurisdiction over is helpful, but also is

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1 done correctly. So that=s my opinion on it, and those
2 specific aspects in looking. And I think CB well, let
3 me hear from others if they agree, disagree, or have
4 additional information.

5 MR. MANN: Mr. Chairman, I agree with the
6 comments that you just made, and I don=t think that you
7 are pushing it too far. And I think to the extent that
8 urban design can address some of the relief requested,
9 I think the preferred alternative would be to reopen
10 the record and continue the hearings, and give the
11 Applicant the opportunity to address some of those
12 things, rather than if we were to deny this, rather
13 than to deny it and make them kind of start from
14 scratch. At least we give them the opportunity to
15 address some of the items that we=ve identified.

16 MR. GRIFFIS: Good.

17 MR. HOOD: Mr. Chairman, I, too CB I may not
18 agree with all of your comments, I think it=s well-
19 advised because the way I=m hearing it, you don=t have
20 the votes to deny this project, and as opposed to
21 denying it, I would like to see us give the Applicant
22 more opportunity, as you stated, to come back with a
23 different design.

24 But I will tell you in my opinion, and having
25 voted on two other projects in the Fort Lincoln area,

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1 it has been a difficult task. This square is very
2 difficult, as we talked about, the retaining walls, and
3 Office of Planning has about I want to say maybe 12, or
4 however many conditions in the things that they point
5 out to try to make this a better site for development.

6 But one of the things where we may part, Mr. Chairman,
7 is with the road access.

8 We have to really be cautious, I believe, not
9 making it a gated community, but South Dakota also, we
10 also don=t want it to become a thoroughfare, and I
11 think that CB I know as it stands now, South Dakota
12 Avenue is a very heavily traveled road. And we want to
13 make sure that the impact is not bad on this new
14 development and those folks who want to be residing
15 there. And that=s something that maybe we=ll look into
16 as we move forward. But obviously, I came prepared to
17 move forward, but as my colleagues have stated, maybe
18 there could be some improvements in it, and I will take
19 heed of what I=ve heard, and hopefully we can improve
20 and get the best available site that we could possibly
21 get. Because I can tell you that this site is
22 definitely difficult to build on. And I applaud the
23 Applicant, so they can maybe get it passed, that they
24 come back with a different design.

25 And also, Mr. Chairman, I don=t know if you

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1 want to move to CB maybe they can come back under
2 Section 14 of the regulations. But, obviously, I still
3 wonder why this was not a PUD. But since it isn't, we
4 have to deal with what's at hand, so I'm glad that
5 we're affording the Applicant some opportunity to come
6 back with a different design, that maybe my colleagues
7 will feel comfortable in moving forward with. Thank
8 you.

9 MR. GRIFFIS: Good. Thank you very much. And
10 I think you're absolutely right in saying you did CB I
11 don't think it's lost CB it's not lost on me that there
12 are difficulties with development on this site. And I
13 think that's what we're taking great care and concern
14 in looking at, and pushing the designers and the
15 developer to maximize the site. I mean, I don't think
16 this Board is by any means indicating that we're afraid
17 of the density that's being proposed, but rather that
18 based on the fact that the density that's being
19 proposed - I mean, almost 210 houses - that further
20 steps need to go in how it's actually laid out to make
21 sure that it all works out.

22 Actually, in terms of CB I think we were
23 saying the same thing in terms of the roads that
24 surround this site, not making them superhighways. If
25 you look at roads that feed into that, and maybe have a

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1 light or stop signs on each of those, it would
2 certainly slow traffic down dramatically, and make it a
3 much more local and locally used road. But that=s a
4 larger picture that I don=t have the expertise in
5 knowing the specific area, certainly not as well as you
6 do. But I think that=s one of the things I was trying
7 to get to, that let=s not make this that you=re trying
8 to enter onto 395 when you leave this development. But
9 rather, make the houses in this development fit into
10 the rest of the surrounding area and the roads. Ms.
11 Miller.

12 MS. MILLER: I wasn=t sure I was going to say
13 any more, because I may end up repeating myself. But I
14 do think OP has some good points, and I was looking a
15 page 2 of their supplemental report, where they raise
16 concerns about the amount of site disturbance proposed.

17 And it=s a connection in this case of a variance
18 between the type of development and layout, and the
19 terrain. And I think that the Applicant will need to
20 show a better correlation as to why the houses are
21 being laid out in a certain way in connection with
22 what=s happening with the terrain.

23 And in this instance, it looks like there=s a
24 lot of leveling proposed. And maybe when they go back
25 to the drawing board, it may come out differently. But

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1 anyway CB

2 MR. GRIFFIS: Okay. What I understand, I
3 think there was a consensus of the Board to continue in
4 this frame, and I=ll hear any opposition if there is
5 any to be voiced. But clearly, we want both of the
6 reports from Office of Planning to be addressed, and
7 especially the supplemental which goes into great
8 specificity.

9 I would call on a couple of those pieces of
10 specificity. The wooded areas, as part of the
11 application, is going into a Y. There=s been CB the
12 plotting has been proposed in order to keep the wooded
13 areas and the green spaces, and the open areas and
14 such. I think if we=re going to look at that as one of
15 the practical difficulties, that we should see - as
16 Office of Planning is saying - what is the vehicle
17 protecting those areas during the development? This is
18 a huge amount of regaining that=s going to happen. If
19 that is keeping CB if part of the test is being based
20 on those being maintained, let=s have a plan of
21 insurance that they will be maintained after all this
22 is done.

23 Going to it also, I think the Office of
24 Planning was looking for a landscape plan. I think
25 that=s not a bad idea to get a little bit more

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1 specificity in terms of the landscape plan that=s being
2 proposed. I think we keep the record open. Mr. Hood
3 has indicated that there may well be other sections
4 that they want to recreate this application. And I
5 think that=s valuable to look at.

6 I don=t think there=s anything, and I don=t
7 think Mr. Hood is saying there=s anything wrong with
8 the way they=re approaching this. And I think the
9 Board will be perfectly satisfied going either way.

10 They are advertised for the variances and
11 special exceptions at this point. I think we can
12 continue in that vein. The record will be kept open
13 also for any sort of redesign that=s happening in order
14 to address Office of Planning=s position, and also from
15 the comments of the Board that we=ve made. Implicit,
16 or I guess it should be expected, but I=ll say it also;
17 as this is reformulated, clearly the variance tests
18 will need to be addressed, so the record will stay open
19 also for any additional information that the Applicant
20 wants to prove with clear direction that we ought to
21 see a new address of the variance relief tests.

22 Okay. Anything else? Yes, Mr. Hood.

23 MR. HOOD: Mr. Chairman, just a question.
24 Since I know the Applicant is going to go back and make
25 some modifications and some changes to bring back to

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1 the Board, I know that that area up there, the ANC in
2 the neighborhood up there are pretty strong. And they
3 would probably concern CB we want to make sure that we
4 allow the time, that we allow enough time for them to
5 go back and do that process. I know you said next
6 month, and I'm not sure CB I wasn't clear what you
7 meant by next month. The next public meeting or?

8 MR. GRIFFIS: Well, I think we're going to set
9 this for a hearing, which means we're probably going to
10 CB Ms. Bailey is going to help me out with the
11 schedule, and I think we're probably looking at
12 October, which would allow a September meeting of the
13 ANC. And I think it would be strongly noted, I don't
14 know how we would do this to get the message to the
15 ANC, but maybe the representative for the Applicant are
16 here today, is that I'm gleaning from our comments that
17 this Board is very supportive of this project, and so
18 certainly by just continuing the hearing, it shouldn't
19 be taken as any sort of detriment or any sort of
20 opposition, so hopefully it won't create that in the
21 community, that the ANC or the surrounding area
22 believes that this Board isn't supportive of the
23 project itself.

24 MR. HOOD: I just wanted to make sure that we
25 don't do CB and if you ever want to get anything over

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1 on people in this City, you do it in the month of July
2 and August. I=ve been on the receiving end, so I know.

3 But I just wanted to make sure that we weren=t going
4 that route.

5 MR. GRIFFIS: Yes.

6 MR. HOOD: But now that I understand we=re
7 going to have another hearing, my comments may be out
8 of place.

9 MR. GRIFFIS: Okay. Ms. Bailey, why don=t we
10 see when we have opportunity for slipping this in.

11 MS. BAILEY: October 26th, Mr. Chairman, in the
12 morning.

13 MR. GRIFFIS: How about the 26th in the
14 afternoon?

15 MS. BAILEY: There is a case, and do you have
16 the schedule in front of you, Mr. Chairman?

17 MR. GRIFFIS: Yes, I do, and it frightens me.

18 MS. BAILEY: And just take a look at the
19 afternoon note there. If you=re satisfied with that,
20 certainly the afternoon.

21 MR. GRIFFIS: No, I don=t want to do it in the
22 afternoon. What about the 19th in the afternoon?

23 MS. BAILEY: Certainly.

24 MR. GRIFFIS: That doesn=t look as filled as
25 the 26th. Is that correct?

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1 MS. BAILEY: Exactly.

2 MR. GRIFFIS: Why don=t we do that.

3 MS. BAILEY: Okay. So that=s October the 19th,
4 afternoon session. And the case is now reopened and
5 that will give a hearing that=s scheduled for October
6 19th.

7 MR. GRIFFIS: Right. Excellent. And, of
8 course, I would say the record is open not just limited
9 to that, but I listed CB I mean, obviously, Office of
10 Planning, I think would be welcome. The ANC, any other
11 additional reports. I think we=re going to have a very
12 limited hearing on that. We=ll see how limited I=ll
13 have to make it, but if folks do come to testify, I
14 think, obviously, we=ll accommodate it, but I=m not
15 anticipating that we=re CB I mean, really this is the
16 end element of a progressive work that I think we want
17 to see and get through. Okay. Anything else?

18 MS. BAILEY: Just you mentioned, sir, that the
19 OP report is generally due seven days prior to the
20 hearing, and the Applicant=s report would be due 14
21 days. Do you want to stick with that deadline? The
22 Applicant=s pre-hearing submission 14 days before the
23 19th. Did you want to stay with that, or did you want
24 to set a specific date for the information to come in?

25 MR. GRIFFIS: No, let=s stick with that. I

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1 mean, I think obviously, as soon as you can get over to
2 Office of Planning is the most important aspect, and
3 out to the community. I'm less concerned about when we
4 get it, but rather that everyone else gets it. But
5 let's stick to that, and not have them confused.

6 MS. BAILEY: Thank you, sir.

7 MR. GRIFFIS: Thank you very much. Okay.
8 Then we will see that in October and know it will
9 continue on better indeed. Thank you very much.
10 Appreciate your being here this morning.

11 Let's go to the next case then for the
12 morning.

13 MS. BAILEY: This is a Motion for Minor
14 Modification of Plans to Condition 1 of BZA Order 16959
15 of 575 7th Street, LLC, pursuant to 11 DCMR 3103.2, for
16 a variance from the area requirements for arts and
17 entertainment-related uses under Subsection 1704.3(a),
18 to allow a contribution to the Shakespeare Theater in
19 lieu of providing arts uses on-site in the DD/C-4
20 District at premises 625-27 E Street, N.W., 620 and 626
21 F Street, N.W., and 501-07 and 511-17 7th Street, N.W.
22 The property is also known as Square 456, Lots 41, 800,
23 and 878.

24 The Applicant has filed a motion, Mr.
25 Chairman, for reconsideration. Two aspects are related

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1 to this motion. First, it=s filed outside of the six
2 months requirement that=s necessary, and the Motion for
3 Reconsideration is also. The Board has to make a
4 decision at this time.

5 MR. GRIFFIS: Thank you very much. You=re
6 absolutely right in the two aspects. I would take a
7 side issue with, in fact, what the motion is for. It=s
8 a minor modification, not a reconsideration just for
9 clarity=s sake.

10 Let me delay a moment while we wait for our
11 other member. Okay. I=m sorry. We=re waiting for one
12 other Board Member to join us, and they will be here
13 momentarily, but it brings up an interesting point,
14 Board Members, that go to the additional filings that
15 have come in under this application. And I understand
16 we have over 250 letters in opposition from hockey fans
17 about the disturbance of the Shakespeare fans on the
18 avenue downtown. And I think actually that is a great
19 bit of humor on my part for the record.

20 Of course, as Board Members will remember, and
21 I say this somewhat rhetorically because the two with
22 me did not sit on this case, but it was an interesting
23 thought of what would spill out of the Shakespeare
24 Theater and a hockey game all downtown on the same
25 avenue, and how they might mix. And it actually brings

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1 a smile to my face to think of that, and that=s just
2 what urban areas and good cities are all about, being
3 down the same place for different reasons.

4 I think going to the facts, and in all
5 seriousness, then getting to this, this was a very
6 complicated case in terms of, one, how it was put
7 together. The numerous structures, the change of views
8 from what they had originally done or originally
9 constructed for, the historic nature of the site, the
10 location, all of which I think many in this city looked
11 at for years and years and thought wow, that=s a great
12 opportunity there, but what is that opportunity?

13 Going through this application and now seeing
14 it built, I can really waste time easily, can=t I? But
15 going through this, I think it=s been a very successful
16 project from everyone=s point of view. One,
17 architecturally, in terms of how it has really animated
18 the area, and continued the animation of what=s
19 happening downtown. And I think it=s a great project.

20 That doesn=t really have any bearing on the fact of
21 what we=re looking at in terms of this minor
22 modification.

23 The first issue to bring up is, of course, for
24 a minor modification there=s a time requirement in
25 which a minor modification can come in. This does not

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1 meet our strict regulations regarding the modification,
2 and so I want to do this all together. If we proceed
3 with granting the modification, we will also be
4 granting a waiver of the time requirement. So that
5 being understood, going back to essentially what I was
6 saying.

7 This was a very complicated project,
8 structurally, architecturally, but also in terms of the
9 zoning regulations and the amount of requirements that
10 were put on it in terms of the overlay, the arts
11 requirements, the retail requirements, the
12 reconfiguring of new, old changes of uses and I think
13 it came together fairly successfully.

14 However, as one sees on this Board, sometimes
15 even with great crafting, our conditions are not done
16 that either sufficiently evidence exactly the intent or
17 become slightly problematic. We have before us a
18 request for a modification of condition number one.
19 Condition number one indicates that the Applicant would
20 provide zoning equivalent of 7,000 square feet of floor
21 area for arts and entertainment-related uses from the
22 Child Place Development on Lots 880 and 41 in Square
23 456. As you know, there were a lot of lots combined in
24 the whole development process. And the difficulty, of
25 course, is when you have add, it will obviously mandate

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1 the separation of those uses across 880 and 41. The
2 reality of the project and the details of it, we're
3 well aware of, and the Board probably should have just
4 said lots 880 and/or 41 in Square 456.

5 What is, in fact, being proposed as a
6 modification reads as follows: AThe Applicant shall
7 provide the zoning equivalent of 7,000 square feet for
8 the floor area for the arts and entertainment-related
9 uses from the Child Place Development on Lot 7000,
10 7004, 7009, 7010 and 7012, part of Lot 41 in Square
11 456. I think that is a clarity that is not outside of
12 exactly what the Board had intended in Condition 1, and
13 I would support it. So let me do that and move that we
14 waive our time requirements in order to entertain
15 the motion for minor modification, and subsequently
16 move the approval of the minor modification, as
17 proposed by the Applicant.

18 MR. ETHERLY: Seconded on both motions, Mr.
19 Chairman.

20 MR. GRIFFIS: Thank you. Any further
21 comments, deliberations? If not then I would ask for
22 all those in favor signify by saying aye.

23 (Vote taken.)

24 MR. GRIFFIS: Opposed? Ms. Bailey.

25 MS. BAILEY: The vote is recorded as 3-0-2 to

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1 approve the motion as read by the Chair, and as
2 requested by the Applicant. We have an absentee
3 ballot, Mr. Chairman, from Mr. Zaidain, so the vote is
4 again 3-0-2, motion made by Mr. Griffis, seconded by
5 Mr. Etherly, Mr. Zaidain in support, Ms. Miller and Mr.
6 Mann did not participate.

7 MR. GRIFFIS: Good. Thank you very much.

8 Ms. BAILEY: The third case, Mr. Chairman and
9 Members of th Board, is the Georgetown Day School, and
10 that=s pursuant to 11 DCMR for a special exception to
11 allow renovation and construction of an addition to an
12 existing private school under Section 206. This
13 application does not include a request to increase the
14 student enrollment or number of permitted faculty and
15 staff. The site is located in the R-2 District at
16 premises 4200 Davenport Street, N.W., Square 1672, Lot
17 821.

18 The Board heard this case, Mr. Chairman, on
19 June 22nd, and a decision is now pending before the
20 Board. Several submissions have been filed, and they
21 are before the Board at this time.

22 MR. GRIFFIS: Okay. As a quick aside, of
23 course, we have Application 17170 that=s just been
24 called. We=re going to get to that deliberation right
25 now, but let me interrupt the schedule and just make an

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1 announcement that within our schedule, we are adding
2 one item which we'll call up in the afternoon, and that
3 is the Burke School application, which I don't really
4 know what the Application number is because all my
5 files are back in the room. And the Board will be
6 dealing with it in our Public Meeting for this specific
7 but very limited area; and that is, we are clarifying
8 some of the conditions that are going into the final
9 order. And we will be approving the final order for
10 issuance today.

11 I guess I will say with all directness, this
12 is not controversial, but as the Board does in all of
13 its orders, and especially the big ones, we review it
14 for the facts and the intent, and the actual decision.

15 That will be done in this process publicly, and we
16 make clarifications, reviews, and revisions to all
17 orders before they are finally written. Of course,
18 that is our final action on it.

19 We think that it is important in this specific
20 case just to make clarification items which we'll be
21 doing in public and on the record, so that's what will
22 happen this afternoon. And it will be, I think, very
23 short, if not 15, 20 minutes. So that will then move
24 us into 17170 for our discussion at this time.

25 Going to it, of course, some of the important

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1 aspects of looking at this, overall this application I
2 think was very well put together and straightforward.
3 We did have the Department of Transportation indicating
4 that they did not see any significant impact or
5 negative impact on the neighborhood. The ANC-3E was in
6 support of the application, but it was conditioned
7 support.

8 And let me say from my rereading and actually
9 being through this, I think their support was well
10 positioned. I believe that they have struck agreements
11 with the school, which are very important. And I think
12 I made hopefully clear, if not, I think I'll make it
13 clear now, that as an individual on this Board, and I
14 think this Board in the past has fully supported a lot
15 of the agreements that are put together between
16 applicants and communities, be it the ANC or the
17 adjoining neighbors. And it=s an important aspect to
18 do, and it=s part of the communication process.

19 However, this Board has, for the past several
20 years, really focused on what our actual jurisdiction
21 is, and how we can CB if we put in an order items, and
22 elements, and conditions, what=s the future impact?
23 Can we actually enforce them? Can we measure them?
24 Are they understandable to everybody, and can we
25 enforce them? And with that great care, I think that=s

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1 how we craft conditions currently, so there are several
2 things that I saw in this application that we=ll get to
3 in terms of proposed conditions that may not well fit
4 into an order that we issue, if it is so approved.

5 Office of Planning was also in support of this
6 and recommended approval of the application. Clearly,
7 as the Board knows, and looking at the review of it, an
8 ambitious project, and looks to be fairly interesting.

9 But let=s get right to the deliberation. Ms. Miller.

10 MS. MILLER: I just want to note that I
11 believe that the ANC met again in July, and they also
12 met with the Applicant and worked out an agreement of a
13 proposed order and conditions. And that they have
14 taken the position that they support the application
15 without regard to whether or not the Board accepts all
16 of the conditions, which is a change.

17 MR. GRIFFIS: Right.

18 MS. MILLER: Okay.

19 MR. GRIFFIS: Good. No, I appreciate your
20 saying that. That=s an important aspect that came in.

21 Okay. I think it=s probably best to pursue this as
22 we=ve done before with these large applications that
23 may well have conditions attached to them, to
24 deliberate under a motion, and so for the purposes of
25 our further deliberation, I would move approval of

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1 17170, Georgetown Day School, for the special exception
2 which would allow the renovation and construction of an
3 addition to an existing private school under Section
4 206. And this is at the premises of 4200 Davenport
5 Street, N.W.

6 The motion I=d like to have seconded for
7 further deliberation to craft the conditions that would
8 be attached to it.

9 MR. MANN: Second.

10 MR. GRIFFIS: Thank you very much. And,
11 obviously, we will reaffirm when we call the vote, the
12 conditions. I think unless there are any other opening
13 broad statements, I think we could get right into the
14 conditions on this. Did you want to say something or
15 no? Excellent.

16 In which case, we have a proposed order and
17 conditions that was actually attached to the July 22nd
18 ANC letter to us that was signed by Mr. Todd. It=s
19 Exhibit 40, and we have a proposed order with
20 conditions submitted by the Applicant=s representative.

21 They are identical, and so I think it would be
22 important to go through and look at it. Condition 1,
23 which would be approval, shall be limited to the
24 highschool, which is grades 9-12.

25 What I=m going to do is read these through as

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1 they are submitted as proposed, and take comments from
2 anybody, so slow me down if we need to. Condition 2
3 indicates the number of students at the highschool
4 shall not exceed 465, and shall be limited to grades 9-
5 12.

6 I think there may be a comment or let me share
7 any reactions to just having the word Enrollment not
8 exceed 465 or not exceeding enrollment of 465. @

9 MR. MANN: That's right.

10 MS. MILLER: I think that's a good point.
11 Even though it's a pretty minor change, I think it's
12 more accurate, and you can get ridiculous with trying
13 to read these conditions, but other students may be
14 coming to the highschool, et cetera, and so we don't
15 just mean at the highschool. We mean the enrollment,
16 so I think that's a good addition.

17 MR. GRIFFIS: It's an interesting position
18 we're put in to read these, re-read them, turn them
19 upside down, read them backwards, and the use of the
20 mirror in Executive Session to read them. It is true
21 though, in all seriousness, the fact that we've seen
22 these come back to us problematically, and I think
23 that's exactly what we're trying to do, is make these
24 as specific as possible.

25 MS. MILLER: And I don't want to be

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1 ridiculous, but I don=t know that I was clear, but I
2 mean even in an instance where you have a dance or
3 something, and there are 500 students at the school.
4 That=s what I was contemplating.

5 MR. GRIFFIS: Exactly.

6 MS. MILLER: Okay.

7 MR. GRIFFIS: Exactly. These are the easy
8 ones. Okay. Number 3, the highschool shall have a
9 maximum of 95 full-time equivalent faculty and staff
10 members. Okay. Number 4, the southeast portion of the
11 site located at the northwest corner of the
12 intersection of 42nd and Chesapeake Street shall be
13 landscaped and maintained as open space. No parking
14 shall be permitted on this portion of the site. I
15 believe that=s a condition that has carried over. Any
16 comments on 4? Very good.

17 Five, at the beginning of each school year,
18 but in no event later than October 15th, the school
19 shall provide the BZA with documentary evidence to
20 demonstrate its enrollment figures, and in compliance
21 with the terms and conditions of this order, including
22 the TMP referencing Condition 11 of this order. This
23 information must be served on the ANC, which will have
24 an opportunity to respond to the school=s submission.

25 Question or comments? Clarification of that,

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1 I think this is something that we are actually
2 implementing in a lot of different orders. But to make
3 it absolutely clear, I know we are clear on it, but for
4 the record; that information that would come in would
5 be referred to our compliance officer if there was any
6 sort of problems. And it would be referred to the
7 DCRA, which would be the enforcement mechanism for
8 compliance. This is not in any usurping or creating a
9 compliance or moving our jurisdiction into enforcement
10 of these orders, which we don't have that. But
11 obviously, it's good for the documentation of the
12 continuing existence of this facility.

13 Six, the school shall offer to appear before
14 the ANC in which it is located during the fall and
15 spring of each year to discuss any issues of concern to
16 the community. The school shall attend any additional
17 meetings deemed necessary by the school and/or the ANC
18 to address issues and concerns raised by the community.

19 Comments?

20 MR. MANN: The only thing I don't like about
21 that one is it's particularly open-ended. And when it
22 says any issues of concern to the community, is that
23 supposed to be limited to the issues identified in the
24 conditions?

25 MR. GRIFFIS: I totally agree with your

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1 comment. How is that measurable, and how do we say
2 whether they=re in compliance or not? That sentence
3 gives me some pause. And, in fact, in the first
4 instance, I think it might not be bad if we put in the
5 school shall offer themselves, or shall make themselves
6 available at the ANC=s request. If the ANC wants them
7 to be there, they should show up and present.

8 How do we get over the CB I mean, the school
9 is proffering this, that they=ll make themselves
10 available for any additional meetings, and I think
11 they=ll go ahead with that. Do you have any language
12 you want to propose?

13 MR. MANN: Let me think about this for a
14 second.

15 MR. GRIFFIS: Yes.

16 MS. MILLER: I guess I don=t really see a
17 problem with this, in that the two parties concerned
18 have agreed to this language, and they know what they
19 mean. I don=t think they expect an enforcement officer
20 to come in.

21 MR. ETHERLY: I would tend to agree, Mr.
22 Chair, with my colleague, Ms. Miller=s, assessment in
23 that regard. It might perhaps be problematic along the
24 lines of where Mr. Mann is heading if we did not have
25 the agreement, because I agree, the enforcement clearly

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1 would be very difficult here. But before we have
2 agreement, I'm somewhat more comfortable in letting
3 that language remain.

4 MR. GRIFFIS: Okay. Mr. Mann.

5 MR. MANN: I'm not going to go to any great
6 lengths to argue the point, but maybe it makes it even
7 muddled a little bit more, but I mean, even just taking
8 to discuss any issues of concern to the community, and
9 in the second sentence, to address issues of concerns
10 raised by the community - maybe that makes it more
11 nebulous, but I don't know. I don't think it's a
12 tremendously large issue.

13 MR. GRIFFIS: Right. Okay. I think we can CB
14 I think the intent is supported by the Board in
15 Condition 6. If we, in our review of the final order,
16 change some words around to make it more clear and
17 maintain the intent of that condition, I think it would
18 be appropriate. So let's move on to seven.

19 All vehicular traffic to and from the site
20 shall use Davenport Street entrance, pedestrian access
21 only will be permitted at 42nd Street entrance, which
22 shall be monitored from 7:45 to 8:15. Any comments on
23 that?

24 Eight is, all pick-up and drop-off of students
25 shall occur on the school grounds. Nine, the site

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1 shall continue to provide one emergency access point on
2 43rd Street, which shall be secured by a 6.5 foot gate.

3 Now there=s specificity for you. The gate shall be
4 locked at all times, except for access by emergency
5 vehicles. Do we want to call it a fancy gate or
6 anything, 6.5 fancy foot gate? Okay. Any comments on
7 that? Obviously, that=s the way the Board, in all
8 seriousness, is very well aware of where that is, and
9 there is a direct connection out. And obviously
10 there=s concern, I think from the school, but most
11 importantly from the community=s aspect that that is a
12 heavy in-and-out traffic ingress and egress of the
13 vehicles. And I think that=s also a carry-over, so
14 transportation management program shall be established,
15 instituted and monitored by the school.

16 The transportation management program shall
17 include the following elements. (A) The school shall
18 encourage the use of public transportation as a primary
19 means of assessing the school by the faculty, staff,
20 students. (B) School shall make available to all
21 students reduced fare Metro Rail passages to encourage
22 use of public transportation.

23 I=m going to break here because (A), when you
24 first read it, I wonder why are we even saying that?
25 But it=s clear that that=s the general heading of what

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1 we=re about to get into. And so how is it going to
2 encourage? Well, it=s going to encourage it by
3 offering the reduced fare to the Metro Rail. Also, no
4 student shall drive a vehicle to school unless there is
5 an on-site parking space for that vehicle.

6 The language of that is kind of interesting,
7 but you know, the intent I think is there. (D) At the
8 beginning of each school, all students must register
9 their vehicles. Comments?

10 MS. MILLER: Do you have a problem with that
11 one?

12 MR. GRIFFIS: Where are they registering it?
13 Can we do it? Can we condition that they register it?
14 Are they registering it downtown, or with the school?

15 MS. MILLER: You know, I interpreted that as
16 meaning with the school, and that that was a way of
17 them to track the cars, but we can specify that.

18 MR. GRIFFIS: I think we should.

19 MS. MILLER: Yes. Okay. I agree.

20 MR. GRIFFIS: After all, I think a condition
21 similar to that has come up.

22 MS. MILLER: With the school.

23 MR. GRIFFIS: All right. So, obviously, I
24 think you=re absolutely right. It=s the intent that
25 the school will register or have a list of the vehicles

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1 that the students would be driving. (E) The students
2 shall be strictly prohibited from parking on
3 residential streets surrounding the campus.

4 I would propose that we say the school shall
5 strictly prohibit all students from parking on
6 residential streets around the campus. That condition
7 on its own, although it=s under the Subsection of D,
8 it=s E. The wording of that seems to put us in charge
9 of measuring compliance, or actually going out and
10 writing tickets. Students shall be strictly CB we=re
11 prohibiting students from parking on residential
12 streets. Well, I=m not sure we can do that.

13 The school can prohibit their students from
14 parking on residential streets. At least, I=d rather
15 have them have the problem of jurisdiction than us.
16 And that=s what=s being proposed here, so I think just
17 clarifying that, that=s not difficult. Yes?

18 MS. MILLER: I would go further than that,
19 too. This looks like they=re being prohibited from
20 parking on residential streets at all times. And I had
21 some problems with this whole issue anyway during the
22 hearing, because these are public streets. However, I
23 see the nexus between during school hours, but this
24 could be read even broader to include weekends and
25 nights, et cetera. So I would propose CB

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1 MR. GRIFFIS: Well, they can=t drive up and
2 shop at Best Buy and park near the school.

3 MS. MILLER: Right. But everybody else can.

4 MR. GRIFFIS: Right.

5 MS. MILLER: Right.

6 MR. GRIFFIS: I see.

7 MS. MILLER: So I would limit it further and
8 say students shall be strictly prohibited from parking
9 on residential streets surrounding the campus during
10 all hours that the school=s on-site parking is open and
11 available for use. I mean, actually as I wrote that, I
12 thought well, if I just do school hours, then what
13 about after-school activities, or whatever. And I
14 think the whole purpose of this garage and what we=re
15 approving is connected to there not being a need for
16 the students to park on the streets anymore, because
17 they can park in the garage. So as long as the garage
18 is available for their parking, they should park there.
19 I assume it=s not going to be available during
20 weekends and nights, or whatever.

21 MR. GRIFFIS: Okay. And that would make sense
22 too then if there was a school activity or a late night
23 game that people are parking, but a student was in the
24 area that wasn=t going to that activity was going to
25 shop in the area, then that parking would not be

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1 available to them. Okay.

2 MR. MANN: I'm going to throw something else
3 in the mix here; and that=s the residential streets
4 surrounding the campus.

5 MR. GRIFFIS: Yes.

6 MR. MANN: In my mind, I don=t know if that
7 means one block away, or five blocks away. I don=t
8 what Asurrounding the campus@ means.

9 MS. MILLER: You know, I don=t know either, so
10 I think if we try to define it, we=re going to get in
11 trouble because we don=t know.

12 MR. MANN: Right. So your suggestion then
13 would alleviate that. Is that right?

14 MS. MILLER: Not really.

15 MR. MANN: Because there=s still some times
16 when residential parking may be allowed.

17 MS. MILLER: Yes. Well, this goes to
18 residential parking being allowed when the garage and
19 the other on-site parking site is not available. It
20 doesn=t go to how many blocks out are you allowed to
21 park. But the further out you go, the less convenient
22 it is for the students. We just don=t have in the
23 record how many blocks out you go. That=s why I=m
24 afraid to put anything in.

25 MR. GRIFFIS: Yes, that=s an interesting

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1 point.

2 MS. MILLER: But this is also an element of
3 their plan.

4 MR. GRIFFIS: Right.

5 MS. MILLER: It=s not exactly our plan.

6 MR. GRIFFIS: Right. Okay. I think we take
7 that in a good note.

8 MS. MILLER: And if it becomes a problem, I
9 would think they can amend it, and they can define it.

10 MR. GRIFFIS: Very well. (F) School employees
11 will be trained at the beginning of each year to
12 implement and enforce the transportation management
13 program. (G) School employees shall monitor the
14 streets surrounding the campus for one semester after
15 the opening of the garage to ensure that the
16 transportation management program is operational and
17 effective, and that no students are parking on
18 residential streets. Comments?

19 MR. MANN: No, except to say I don=t know
20 which CB again, it doesn=t restrict CB it doesn=t
21 define which residential streets it is, but I guess
22 that=s CB it=s addressed the same way that the previous
23 comment was.

24 MR. GRIFFIS: Comments?

25 MS. MILLER: Well, I mean it=s not a condition

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1 I particularly like, but with respect to no students
2 are parking in residential streets. I mean, again it=s
3 a little bit vague.

4 MR. GRIFFIS: I would propose that school
5 employees shall monitor the streets surrounding the
6 campus for one semester after the opening of the garage
7 to enforce the transportation management program.

8 MS. MILLER: I would concur with that.

9 MR. GRIFFIS: Okay.

10 MR. MANN: I think that=s better.

11 MR. GRIFFIS: (H) The transportation
12 management program shall become a part of the
13 enrollment contract between the school and parents, by
14 which the parents shall agree to be bound by its fines
15 and punishments, as follows. First violation,
16 parent/student warning shall be issued. Second
17 violation, a monetary fine. I propose one shiny
18 nickel. Third violation would be doubling of that
19 monetary fine, or one thin dime. And fourth violation,
20 disciplinary action shall be taken, which may include
21 suspension. Fifth violation would be additional
22 disciplinary action shall be taken, which may include
23 expulsion from school.

24 Obviously, I have the bad habit of trying to
25 introduce a little bit of humor. But I think the

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1 intent is well said in terms of the violation, the
2 level of violations, and I think we've seen that. I
3 just wanted the Board to focus on the fact that we're
4 not, and they're not proposing a defined monetary fine.

5 And the fourth and fifth do have the issuance or the
6 utilization of the word Amay@. I, particularly, don't
7 have a problem with that, but I do think we need to be
8 clear on what's actually being proposed.

9 I mean, we've had both extremes. We've had
10 extremes where there is - my gosh, there's thousands of
11 dollars of fines for not holding up with an agreement.

12 And we have something of this nature, which is, I
13 think, more flexible and more accommodating, and
14 frankly, it may well serve the school to progress as
15 times change in a couple of years. You know, the
16 monetary level may change, and they may find the
17 disciplinary action also changes. Yes, other comments?

18 MS. MILLER: Well, I'm just wondering if it
19 just should stop at CB well, let me just hear it. The
20 transportation management program shall become a part
21 of the enrollment contract between the school and
22 parents, by which the parents shall agree to be bound
23 by its fines and punishments.

24 I don't know. I mean, then it says as
25 follows, and you have the five degrees of punishment,

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1 but I don=t know how long this order is going to be in
2 effect, and it may be CB we didn=t find that these
3 elements were particularly necessary, and how long are
4 these going to be in place?

5 MR. GRIFFIS: Well, let me propose this then.

6 If you did (H), Transportation management program
7 shall become a part of the enrollment contract between
8 the school and parents, by which the parents shall
9 agree to be bound by its fines and punishments, period.

10 MS. MILLER: That=s what I=m proposing.

11 MS. BAILEY: Okay. And that way, their
12 transportation management program can change their
13 fines, punishments, or whatever they want.

14 MR. ETHERLY: And you would then eliminate the
15 subsequent clauses, 1-5.

16 MR. GRIFFIS: Right. Because those would be
17 listed in the transportation management program, and
18 not in the order.

19 MS. MILLER: I mean, in considering these
20 conditions also, we know that they have a separate
21 agreement anyway that they=re agreeing to, that the
22 parties are agreeing to.

23 MR. GRIFFIS: Right.

24 MS. MILLER: It may include that. It does
25 include that, so we don=t have to have it in our=s.

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1 And just as we don=t have the records, I think that=s
2 a CB

3 MR. GRIFFIS: Right. No, it=s true. Okay.
4 Eleven, on-site parking shall be limited to use for
5 school-related activities. The service parking area
6 shall be secured by a chain, gate or cable during all
7 hours that the lot is not in use. When the parking
8 area is open during non-operating hours, the school
9 shall provide security to prevent unauthorized parking.

10 MR. MANN: You know, I think that=s just fine,
11 but I don=t understand why. Personally, if I were a
12 resident of the area, I think I would have tried to
13 extract some gain out of that, but I guess if that=s
14 what they want, then let it be chained off, and nobody
15 can use it.

16 MR. GRIFFIS: Right. Yes, it=s interesting.
17 All right. So service parking area shall be secured by
18 a chain, gate or a cable. Okay. We=re going to just
19 put in something in there, secured by a chain, gate,
20 cable, or similar, just so we don=t get into the
21 absurdity of non-compliance because it=s neither a
22 cable, nor a chain that locks that thing up. Right?
23 Okay. Very well. Anything else on eleven?

24 Twelve, parking garage shall be limited to use
25 for school-related activities and will be available for

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1 use at all times that the school is open. School shall
2 have security personnel on duty at the school and
3 monitoring the garage at all hours that the garage is
4 open. The garage shall be secured during all hours
5 that it is not in use.

6 Thirteen is, during special events which
7 increase the demand for parking beyond the number of
8 spaces available on-site, the school shall provide
9 shuttle bus service to and from the Tenleytown Metro
10 Rail station to minimize potential overflow parking in
11 neighborhoods and streets by visitors to the school.
12 Adequate notice of such service shall be provided by
13 the school to all invited participants in the special
14 event. Okay.

15 I think if there was a lot of evidence on the
16 special events that we went through, which there was
17 not in this case, I think we=d obviously be much more
18 specific as to what events actually would trigger how
19 you would measure the triggering that they would not be
20 able to make capacity of the parking. In that that=s
21 not specific to this case, I think we can move on.
22 Hold number thirteen.

23 Number fourteen, during its hours of
24 operation, only school faculty, staff, and students,
25 and visitors who have checked-in with the school office

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1 shall be permitted on the site, except for persons
2 attending special events, such as athletic events,
3 plays, parent meetings, similar school-related
4 activities.

5 MR. MANN: I'm actually a little bit confused
6 by that one.

7 MR. GRIFFIS: Wow, me too.

8 MR. MANN: And I didn't CB Aexcept on@ - does
9 that mean that it=s okay if they don=t park at the
10 school?

11 MR. GRIFFIS: Well, my fundamental question I
12 think is going in the same direction. First of all,
13 what does this mitigate in terms of the facts that we
14 saw in the case? Secondly, why wouldn=t the school
15 want to make sure whoever comes in, is supposed to be
16 there? Why do we need to be involved? And it seems to
17 me CB so I think we could strike fourteen.

18 MS. MILLER: Yes.

19 MR. ETHERLY: I just don=t believe it=s
20 pertinent to the zoning inquiry.

21 MR. GRIFFIS: Okay.

22 MR. ETHERLY: It=s an appropriate school
23 policy, of course, but not pertinent.

24 MS. MILLER: Right.

25 MR. GRIFFIS: Right. Excellent. Fifteen -

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1 you know, how does the Fed Ex guy fit into that? Is he
2 a visitor? Okay. Fifteen, the hours of operation in
3 school for classes shall not exceed from 8:15 a.m. to
4 3:15 p.m. All extracurricular inter-scholastic
5 activities held on the site shall be concluded by 11:30
6 p.m. How does summer school, tutoring classes fit into
7 that?

8 MS. MILLER: I don=t know. I don=t believe
9 there=s a record for this. I mean, it may go to noise,
10 it may go to something like that, but I don=t remember
11 hearing testimony about why this was important.

12 MR. GRIFFIS: Okay. I would say that is true.
13 The fact in the testimony in the record was that use
14 of the field, and the timing on the field, which we=re
15 going to get to. So I don=t think it went into the
16 hours of operation of the school. And it seems to be
17 CB I think I=m of the same understanding from the other
18 comments, is now we=re getting into the program and
19 operation of the school, which will set its own CB I
20 mean, what=s the difference between 8 and 8:15? I
21 don=t think they=re starting school at five in the
22 morning, although that may be the new academic
23 philosophy, but the highschool is required to meet for
24 a certain amount of time, certain amount of days, no
25 matter what it is, what highschool. Okay. So I think

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1 is it consensus then to remove fifteen?

2 MS. MILLER: Yes.

3 MR. GRIFFIS: Okay. Sixteen, all inter-
4 scholastic activities utilizing the athletic field
5 shall be scheduled to conclude CB

6 MR. ETHERLY: Mr. Chair, let me pause for a
7 moment and go back on 15, and I think 16 might actually
8 invoke a similar conversation. To the extent I agree
9 with Ms. Miller, in terms of trying to parse to my
10 recollection of the record in terms of support for the
11 rationale, but to the extent you give consideration to
12 the issue of noise or other similar types of
13 disturbances that that condition might be attempting at
14 abate. Because there=s some measure of consensus
15 between the ANC and the party here, the Applicant here,
16 I=m wondering whether or not perhaps 15 is fine as is.

17
18 I=m kind of on the fence, because typically it
19 is the type of a condition that I would encourage us to
20 stay away from, but because there=s an agreement here,
21 I=m wondering or not that gives us a little more
22 flexibility to work with it.

23 MR. GRIFFIS: What about this as a compromise,
24 because I think you=re right, Mr. Etherly, it may speak
25 to some of the things that may have been an issue

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1 before us, but weren=t because they were already ironed
2 out. But maybe we keep in all extracurricular, inter-
3 scholastic schools activities held on the site shall
4 conclude by 11:30. I mean, that seems to go to more of
5 the impact on the surrounding area. The point of
6 whether it=s 8 to 3, or it=s 8:15 to 3:15 operation CB

7 MR. ETHERLY: Class operation.

8 MR. GRIFFIS: CB is something else.

9 MR. ETHERLY: I can agree with that.

10 MR. GRIFFIS: The after-hours, and that way
11 they don=t rent the facility out for raves until 2 in
12 the morning or something, Tuesday, for BZA Members.

13 MR. ETHERLY: I would agree with that. And I
14 might also be inclined to suggest then that that takes
15 it towards the vein of where Condition 16 is going, so
16 is there some utility to be gained by collapsing those
17 two conditions into one? I don=t know. I=m jumping
18 ahead, but I agree with the first suggestion, eliminate
19 the reference to the operations as far as classes go,
20 and retain the language that reads Aall extracurricular
21 or inter-scholastic activities held on site shall be
22 concluded by 11:30 p.m.@

23 MR. GRIFFIS: Okay. Good. Thank you.

24 Comments?

25 MS. MILLER: Yes, I=d like to make a general

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comment; that is, some of the genesis of these conditions were previous orders and previous BZA orders relating to the school. And that=s where, when we had the hearing, the ANC Commissioner said something to the effect well, these conditions were in previous orders, and why aren=t we responding positively to the conditions that day. And that has stuck with me, and I want to put on the record, and I hope he=s listening, because I think that one of the comments he made was well, we know there=s a different Board, and the philosophies are different. And that may be true, but what=s most driving this Board is CB I mean, I think I can speak for the Board - is recent Court of Appeals decisions, and one in particular is *President and Directors of Georgetown College versus District of Columbia Board of Zoning Adjustment*, a 2003 decision, in which the Board found that the BZA had gone way overboard in granting conditions, and it had gone so far afield of zoning that one of the judges had to define zoning in the order. So I think this Board is reacting to conditions, being very cognizant of that guidance from the Board, from the Court - what=s in our jurisdiction, and what isn=t, and whether there=s been a record made for substantiating the imposition of conditions.

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1 So anyway, I was looking back at the previous
2 BZA order and I saw that there was one condition that
3 did talk about the hours being from 8:15 to 3:15, so
4 I=m sure that=s where that came from.

5 MR. GRIFFIS: Right. Indeed. In fact, 15 is
6 the last condition of the previous order, and so the
7 rest would be new. But I think that it is well said,
8 and I do think we have the facts and the evidence in
9 the record to revisit the conditions that we have, that
10 were from the previous order. And with the eye, as Ms.
11 Miller has said, of some recent court decisions and
12 review of conditions from this Board.

13 Okay. So going into 16 then, 15 as amended or
14 revised, 16 would read: AAll inter-scholastic athletic
15 events utilizing the athletic field shall be scheduled
16 to conclude no later than 7:30 p.m. In situations
17 where an event goes into overtime, subject to weather
18 delays, or subject to other conditions that force the
19 event passed 7:30, that must conclude no later than 8
20 p.m.@ Can=t we just say when it gets dark?

21 MS. MILLER: Yes.

22 MR. GRIFFIS: Leave the field when it gets
23 dark. I=m kind of joking, but during the school year
24 it=s going to get dark pretty early.

25 MR. MANN: No, you=re right. I mean, the next

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1 one says there=s not going to be any artificial
2 lighting on the athletic field anyway.

3 MR. GRIFFIS: Right.

4 MR. MANN: Right. But how do you define
5 Adark@? I mean, lunar left in the playing field?

6 MR. GRIFFIS: When the hardball hits you in
7 the head because you didn=t see it, get off the field.

8 It seems to be CB I understand, and I think it=s an
9 important aspect that you don=t want to have athletic
10 events running late into the night.

11 Actually, the substantive problem I have with
12 16, the way it=s written, is that we=re so direct -
13 7:30, clear the field. But we obviously have to give
14 some flexibility, because they=re athletic events.
15 They=re not classes. The bell rings, the lecture is
16 over, so then we give this whole release of, but if you
17 run into any sort of delays you can keep going. I
18 don=t know. It=s been proffered. We can try and smith
19 it. I=m satisfied with just running with it as
20 written, noting some of our concern on it.

21 MR. ETHERLY: I agree with your concern, Mr.
22 Chair. I probably - because I wouldn=t want to get
23 into the sticky wicket of trying to wordsmith it. I
24 would just as soon probably leave it alone. Once
25 again, I feel somewhat comfortable because there=s been

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1 an agreement here that=s been reached, so I=m certain
2 that the Applicant has given some thought to the
3 practical implementation of that kind of language.

4 I mean, I agree with you it=s hard to predict
5 in the instance of an athletic event or perhaps some
6 other type of extracurricular activity, timing -
7 especially an athletic context, but it might be more
8 trouble than it=s worth to try to wordsmith it.

9 MR. GRIFFIS: Actually, you brought up an
10 excellent point which I think makes me say let=s keep
11 it and move on; and that is, practical implementation.

12 What it goes to is the school is going to have to
13 schedule it. At 7:30 the field is not used, so if it
14 is practice, you=re going to set your practice for two
15 hours at 4:00 and have it free and clear. You=re also
16 going to schedule games. You=re going to make sure
17 that the teams can get there in time to set up, to get
18 on the field and play, and be finished by 7:30. So I
19 think it=s fine the way it is. And, frankly, giving
20 that specificity I think will help its implementation,
21 meaning the scheduling and all that. And everyone is
22 going to be clear.

23 MR. MANN: An alternative though might be just
24 you could consider this. If you did away with number
25 16 in its entirety, and number 17, then the artificial

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1 lighting of the athletic field would become the
2 determining factor on when athletic events are
3 scheduled.

4 MR. ETHERLY: I like the thinking, Mr. Mann,
5 and not being familiar with the vagaries of the
6 particular athletic conference that the Applicant may
7 be engaged in, my only concern might be, as you begin
8 to move into and away from daylight savings time, what
9 does that do potentially in terms of when we get into
10 the season where the nights run a little longer? I
11 just as soon remain with the specificity, because I
12 think it is so specific that it provides protections.

13 MR. GRIFFIS: Right. 7:30 get home, have
14 dinner, do your homework. Okay.

15 MR. ETHERLY: Is that a proposed condition,
16 Mr. Chair?

17 MR. GRIFFIS: Yes.

18 MR. ETHERLY: That was said in jest, of
19 course.

20 MR. GRIFFIS: Okay. Anything else?

21 MS. MILLER: I just want to use this
22 opportunity to make another general comment. I think
23 as we sit here, we're kind of like surmising, well, do
24 they really need it, or why do they need it. And it
25 seems like it would be a better approach maybe in the

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1 future when parties submit conditions. Either we have
2 some kind of hearing or hear from the parties why they
3 need these kind of conditions. Some of them may be
4 very obvious, but some of them are not, if they're
5 substantiated with reasons.

6 We're guessing a little bit. This is not CB
7 it's just a point. We can go by it, and I think these
8 are little conditions that we're talking about, but
9 we're spending a lot of time haggling over them, and
10 maybe we wouldn't have to do that. That's my only
11 point.

12 MR. GRIFFIS: Right. Seventeen, there are no
13 artificial lighting CB there shall be no artificial
14 lighting of the athletic field. The bell system within
15 the school shall not be audible in the neighborhood,
16 except for standard emergency alarm systems. Okay. I
17 would just as well take that out, but let's leave it
18 in, and move on. I hope we don't ever see something
19 come back to us that somewhere in the neighborhood you
20 can hear the bell. I mean, that's a very vague, very
21 open CB if it's that loud, it's probably harming the
22 children's ears in this school, but let's move on.

23 Nineteen, AStudents= cars that are parking on
24 either side are either in the surface lot or in the
25 garage are to stay on campus during the hours that

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1 classes are in session, except for trips off-campus for
2 the following purposes.@ They=re obviously instituting
3 a closed-campus policy, and they list the four
4 opportunities where a student would leave. I think
5 that=s fine, unless there are other CB

6 MS. MILLER: Well, they can walk out. It=s
7 not a totally closed campus.

8 MR. GRIFFIS: Lock down.

9 MS. MILLER: They can walk to nearby CB

10 MR. GRIFFIS: This is going to driving.

11 MS. MILLER: Yes.

12 MR. GRIFFIS: Students cars parked wouldn=t
13 leave.

14 MS. MILLER: Right.

15 MR. GRIFFIS: Okay.

16 MR. MANN: I think that=s actually an
17 important point, and I think maybe it just needs to be
18 reworded so that it simply says that you can=t take
19 cars off campus except for these reasons. At the
20 moment, it kind of says that students can=t leave
21 campus for that reason. But I don=t know, maybe
22 everybody else understands that.

23 MS. MILLER: No, I thought he was saying it
24 was a closed campus, and I was saying no, it=s just
25 closed for the cars leaving. I don=t read it as the

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1 students can=t.

2 MR. MANN: I did, the first time I read it.

3 MS. MILLER: You did? The students= cars.

4 MR. MANN: Well, it also says Astudents= cars
5 that are parking@, but students= cars aren=t parking.
6 Students are parking their cars. But when I read it, I
7 thought that it meant that the students couldn=t leave,
8 but maybe I=m the only one that didn=t understand that.

9 MR. GRIFFIS: We have too many English majors
10 here. I think that=s an interesting point. The
11 vehicles are to stay, so we=ll put that in.

12 MR. ETHERLY: Now, I=ll leave it as is.

13 MR. GRIFFIS: As is.

14 MR. ETHERLY: Keeping in mind my colleague,
15 Ms. Miller=s, caution about trying to shall we say
16 prognosticate too much, or read too much into the
17 condition. My initial concern was from an enforcement
18 standpoint, I could very well see a scenario where
19 there are concerns or allegations raised about there
20 are, in fact, cars that are leaving at some point. And
21 while I don=t question the appropriateness of the
22 policy, I initially was concerned about whether or not
23 it needed to be enunciated here. But I=m fine with it
24 staying as is.

25 MS. MILLER: I think that=s a good point.

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1 We're talking about here conditions that DCRA is going
2 to have to enforce. And its good point is that this is
3 pretty difficult to enforce because they won't know the
4 intent of why these cars are leaving.

5 MR. ETHERLY: I mean, you could envision the
6 scenario where that level of inquiry could have to be
7 undertaken by DCRA. Now once again, I'm fine with it
8 staying in because I think the backstop here is the
9 Applicant and the ANC have, I am certain, gone through
10 these with a fine tooth comb, and have considered the
11 challenges and the practicalities of implementation.
12 So that gives me a certain measure of check here.

13 The compromise could conceivably be, you
14 recall that as we looked at what would be, I believe,
15 Condition 10-H, which spoke to the transportation
16 management program. If the student parking policy is
17 considered part of that transportation management
18 program, as would be the fines and punishments that are
19 a part of the enrollment contract, could you simply add
20 in the word Arules@ as part of that clause, which would
21 get you to all of this. Because this, to me, is very
22 specific rules or regulations that are going to be part
23 of what a student has to be responsible for. Does that
24 perhaps get you here? But I'm comfortable avoiding all
25 that wordsmithing and just leaving it in, but that

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1 could be one way around it.

2 MS. MILLER: Right. Are you saying that we
3 would move 19 to like make it H under 10, and that this
4 is one of the elements in their transportation
5 management program?

6 MR. ETHERLY: Not that detailed, but really
7 just more of a reference to it, so 10-H as it=s
8 currently left, I believe was the transportation
9 management program shall become a part of the
10 enrollment contract between the school and parent, by
11 which the parent shall agree to be bound by its fines
12 and punishments, period. Could you simply add in the
13 word Aby its rules, fines, and punishments@, period.
14 And that by reference gets you the benefit of this type
15 of rule without having to enunciate it. Of course,
16 creative counsel could still pursue enforcement, but it
17 takes the direct reference out of it.

18 MS. MILLER: Okay. I think that we should do
19 both. I mean, if you put it in by its rules, I don=t
20 think that=s problematic in H, and then make it CB

21 MR. GRIFFIS: But it=s in an order. I mean,
22 this is even above the TMP.

23 MS. MILLER: It is?

24 MR. GRIFFIS: I understand what you=re saying.

25 MS. MILLER: I guess my problem is CB

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1 MR. GRIFFIS: Here=s the other thing in terms
2 of enforcement, which I think is an interesting thing,
3 obviously, we have to look at, and how this mitigates
4 any potential adverse impact, but then how we would
5 actually look at the compliance of it.

6 One of the conditions on this is that all
7 vehicles are registered with the school, so that the
8 school has it. The school should know if a car pulls
9 outside that a student is not on campus, not in school,
10 and they should know exactly why. So if somebody came
11 up and said I saw that car leave, why did it leave? If
12 this is their scenario of how they=re going to do it,
13 they=re going to be able to go, and they=re going to
14 say that car is associated with this student, and this
15 student is signed out for one of the four reasons;
16 either have an approved leave, they=re going for their
17 community service, extracurricular activity,
18 internship, or one of the like. I think it=s all
19 there. I think the system, as complex as it is, it
20 seems to all pull together.

21 MS. MILLER: Okay. The only place I=m stuck
22 is it just sounds like this is a good school policy
23 that they should enforce, as opposed to someone coming
24 to DCRA saying that this provision has been violated of
25 the BZA order.

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1 MR. GRIFFIS: Okay. And I absolutely agree
2 with you, except for this one situation; and that is
3 one of the impacts under 206 that has to be mitigated
4 is traffic impact. And one of the facts in evidence
5 that came up in this case, limitedly, but came up, is
6 how much in and out of the school - if you build a
7 whole new parking lot, they will come, you know. So
8 now you have all these cars, and they don=t want to
9 have a lot of daily traffic all the time. So this
10 seems to address that aspect of it. They=re going to
11 come in, park, and they=re not leaving until they=re
12 allowed to leave at 3:16:30.

13 MS. MILLER: I agree with you. I see the
14 connection. I just don=t see the enforceability.

15 MR. GRIFFIS: Okay.

16 MS. MILLER: So I thought CB

17 MR. GRIFFIS: I see it.

18 MS. MILLER: All right.

19 MR. GRIFFIS: If it ever gets down to that
20 fact of enforcement of that actual provision, I think
21 it=s there.

22 MS. MILLER: Okay.

23 MR. ETHERLY: So it=ll remain in, and I=m
24 comfortable with that. I just want to say, I
25 appreciate the discussion, Mr. Chair.

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1 MR. GRIFFIS: Good. No, and I think it=s a
2 valuable discussion. Now on 20, all existing and new
3 mechanical units, including air conditioning units
4 shall be oriented toward the north-end side of the
5 mechanical penthouse away from the adjacent residential
6 neighbors on the south side of school property, as
7 shown in the plans marked Exhibit 29 of the record.

8 I don=t see any difficulty with that. That=s
9 actually a redundant condition. The plans are in
10 there. That is one of the things that did come up and
11 is showing. So 21, the school may make its highschool
12 facilities and grounds available to organized community
13 groups. If we hadn=t removed number 14, I think that
14 one might be a problem, but that=s gone. And I guess
15 this would be CB well, there it is. Any comments?

16 MR. MANN: I guess that means all the
17 facilities except the parking garage.

18 MR. GRIFFIS: You hit exactly the difficulty
19 with that. The grounds are the parking garage. I
20 mean, its facilities, the building and the grounds.

21 MR. ETHERLY: I mean CB

22 MR. GRIFFIS: Would they have to come under
23 the provisions of all the other related conditions?

24 MR. ETHERLY: That actually is where I was
25 heading. I mean, I=m CB gosh. I think Ms. Miller=s

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1 comment earlier was probably prophetic in terms of
2 getting into the level of detail, but I think it=s an
3 important query.

4 Perhaps the way to get at what Mr. Mann was
5 saying is, to an extent, what=s good for the goose is,
6 indeed, good for the gander here, and that you might,
7 indeed, want to add language at the end of that clause
8 which does say consistent with these conditions.

9 I mean, I think it=s understood that if the
10 school does, indeed, make its facilities or grounds
11 available to an organized community group, that by
12 implication CB actually, I=m going to stop right there.

13 I=m going to turn it back to CB

14 MS. MILLER: I=m going to jump in then
15 because, yes. Okay. There=s a contradiction I believe
16 then between this condition and Condition 11 that says,
17 AThe on-site parking shall be limited to use for
18 school-related activities.@

19 MR. GRIFFIS: Right.

20 MS. MILLER: So we have to just pick one. I
21 mean, it seems to me the one to take out is that first
22 one, that the on-site parking shall be limited to use
23 for school-related activities, if there=s evidence here
24 that they want to make the facilities available to
25 organized community groups.

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1 MR. MANN: I agree.

2 MS. MILLER: Then they=re free to limit it how
3 they want later. Well, if they=re prohibited now, then
4 they cannot make that available to organized community
5 groups.

6 MR. ETHERLY: Well, that=s if you take CB and
7 that=s why I stopped sort of to pause, because I don=t
8 want to venture into setting precedent here. Let me
9 just float this. I mean, that outcome is a concern if
10 you take a restrictive reading of school-related
11 activities. If you are perhaps more of a fan of the
12 community school type of concept, then you would think
13 it is entirely appropriate for a school facility to
14 make itself available for community uses. That is part
15 and parcel of the educational mission in many
16 institutions, as such. I don=t necessarily think they
17 are mutually exclusive, and could indeed work in
18 concert.

19 MR. MANN: The school is ultimately going to
20 be the one that controls who parks in their lot and who
21 doesn=t, anyway. And number 11 talks about
22 unauthorized parking. They=ll be the ones to authorize
23 it, so if we were to take Ms. Miller=s suggestion and
24 remove that first sentence of Condition 11, then it
25 means that they can use it. They can allow it be used.

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1 They can authorize it to be used by community groups
2 if that=s what they wanted to do, but it takes out that
3 strict provision of not being able to use it for
4 activities that are not related to school.

5 MR. GRIFFIS: Yes, I see. Take out the first
6 sentence of Condition 11, and it would read, AThe
7 surface parking area shall be secured by a chain,
8 cable, gate, or similar during all hours that the lot
9 is not in use. When the parking area is open during
10 non-operating hours, the school shall provide security
11 to prevent unauthorized parking.@ I think that
12 succinctly says it. That way Condition 21 can remain,
13 AThe school may make the high school facilities and
14 grounds available to organized community groups.@ Does
15 that make sense?

16 MR. ETHERLY: Kill joys. No, that works. I=m
17 in agreement with that, Mr. Chair.

18 MR. GRIFFIS: Excellent. Okay. Twenty-two,
19 AThe school shall perform a hydrology study of the site
20 area in advance of any construction, and the results of
21 the study will be presented to the ANC-3E at the public
22 meeting before construction begins.@ Anyone have any
23 difficulty with that one?

24 MR. MANN: I think it=s unusual. I=m not
25 quite CB

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1 MR. GRIFFIS: I would not agree with keeping
2 that in.

3 MS. MILLER: I think we're entering the
4 conditions dealing with construction, and construction
5 activities. And I think it's the Board's position that
6 we don't have jurisdiction over construction
7 activities. So, therefore, any of them dealing with
8 construction activities would come out.

9 MR. GRIFFIS: Well, the other aspect of it is
10 - first of all, it is going to a point which was a fact
11 in the case, and that is during this construction, the
12 storm water management and run-off is of concern for
13 the surrounding area. That's obviously a concern for
14 us too, but with that condition, all it's saying is
15 that they have to present to the ANC. I mean look at
16 it, it just says - all right, so they have to do this
17 study, and then they just have to present it. It's
18 almost meaningless as a condition in terms of what the
19 impact would be, or what we'd actually mitigate. It's
20 not mitigating anything. It's just a matter of
21 process.

22 I think it's an excellent one. I would
23 imagine that the school in all construction is going to
24 do this, and that they should share that, and make sure
25 it's addressed. Again, I totally agree - it does go to

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1 construction management and impact, and I would hope
2 that they=re going to do that anyway without this
3 condition.

4 It=s also very temporary. It=s a specific
5 time and a specific element that needs to be done.
6 These conditions, as I viewed them in my opinion is,
7 it=s going to, first of all, the final product, and how
8 it would continually as that project and product is in
9 existence, mitigate any adverse impact. So it=s a
10 continuing situation on which these conditions would
11 go. Something that time-specific and that one-shot
12 seems to me, should be a side agreement that is done or
13 a promise by everyone involved.

14 MR. ETHERLY: Mr. Chair, I would tend to agree
15 with your comments and those of Ms. Miller with respect
16 to proposed Condition 22 and 23.

17 MR. GRIFFIS: Right.

18 MR. ETHERLY: I might, however, offer a
19 somewhat different perspective with regard to 24 and
20 25, which don=t endeavor to go into the level of detail
21 that we see in 22 and 23, but I think still speak
22 broadly enough around the concern of objectionable
23 traffic conditions.

24 MR. GRIFFIS: Right.

25 MR. ETHERLY: And might not venture too far to

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1 try to structure construction. I might ask for comment
2 from Ms. Miller, and ask if she would agree with that.

3 MS. MILLER: Okay. I think that the
4 construction activities are really serious concerns for
5 the neighborhood, and they really need to be addressed.

6 And the question is, do they belong in our orders.
7 That=s all. And as I understand, especially in this
8 case, there is an agreement between the Applicant and
9 the ANC that addresses these same conditions. And I
10 hesitated over 24 and 25, as well, because they related
11 to parking conditions related to the school, et cetera.

12 But again, when you look at enforcement, where the
13 contractor is going to park and things like that,
14 that=s really not our jurisdiction, so since it=s
15 covered by another agreement anyway, and we really
16 don=t have jurisdiction over construction, my
17 inclination would be to leave them out.

18 MR. ETHERLY: Might I then suggest with regard
19 to 24, I would be inclined to agree with Mrs. Miller,
20 and that would probably strike the second sentence of
21 proposed Condition 24, which speak so the contractor
22 parking component. I think the first sentence of
23 Condition 24, as proposed, still speaks to the school
24 undertaking all efforts, of course, to still enforce
25 the existing parking policies during construction.

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1 Proposed Condition 25, I mean we=ve seen CB
2 actually, I=d be comfortable with 25 dropping off, as
3 well, hesitantly, but I=m not willing to fall on a
4 sword over it.

5 MR. GRIFFIS: Okay. Let me see if I follow.
6 Twenty-three it is the consensus taking that out.

7 MR. ETHERLY: Twenty-two and 23.

8 MR. GRIFFIS: Right, 22 and 23 are out. I
9 would propose in 24, because here=s what=s actually
10 being addressed in 24 - there=s two aspects to it. One
11 is the removal of parking that=s existing, which
12 actually goes to the previous structure and facility.
13 And it is a temporary provision, and I=m hesitant to
14 get into it, but before the fact that this may be a
15 long-term - it may be a whole year and the impact may
16 be big - that we do during the period of construction
17 when the existing campus parking spaces are reduced,
18 the school shall provide alternative parking equal to
19 or greater than that being removed, or the numbers
20 being removed at an alternative location. So if you
21 have five that you are filling up for non-students or
22 going away, and it=s like a case that we had before,
23 then you need to provide five somewhere else so we keep
24 the number that are available on site now equal.

25 Now the other thing that did come up, and I=ll

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1 let comments on that to see if we want to do it in that
2 frame. The last sentence which you were saying to take
3 out, AIn addition, the school will make the
4 requirements for all contractors, that no worker will
5 park either personal or business vehicles on the
6 surrounding residential streets during construction@.
7 This came up during the hearing, and actually I think
8 the Board made the comment that that would be a more
9 applicable condition in the general contractor=s
10 contract with the school. They can certainly negotiate
11 that in, and obviously make it either a requirement or
12 a full understanding of the G.C. that they=re going to
13 have to monitor where all these folks are, and where
14 they come, and where they put their vehicles.

15 MR. ETHERLY: I agree.

16 MR. GRIFFIS: Okay. Comments?

17 MS. MILLER: Yes. I=m looking in the order.
18 I=m not sure if it=s here, but I=m sure they=re
19 required to have a certain number of parking spaces
20 now. Maybe it=s not in this order, because this order
21 goes to the expansion. I mean, because we=re talking
22 about moving parking spaces that they currently have
23 for any reason.

24 MR. GRIFFIS: Right.

25 MS. MILLER: That they always have to have

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1 those number of parking spaces available because of the
2 ratio.

3 MR. GRIFFIS: Right.

4 MS. MILLER: So I mean, I guess I can say I
5 can certainly go along with this provision, because
6 it=s not that different - construction versus any other
7 reason. But losing parking spaces, somehow they=ve got
8 to --

9 MR. GRIFFIS: Replace them.

10 MS. MILLER: CB replace them or make
11 arrangements another way. Yes, okay.

12 MR. GRIFFIS: Excellent. Okay. Then 24 and
13 25, I would agree that it=s a construction management
14 plan, and I think Mr. Etherly and Ms. Miller said it
15 very well, that there is that agreement - an important
16 one. And in all these applications that we look at,
17 construction is probably the biggest impact that we=re
18 going to see in any project. However, they=re not CB
19 no application that I=m aware of since I=ve been on the
20 Board, has come in for zoning relief attendant to the
21 construction. Right? I mean, it=s the end-product,
22 it=s the project that=s going to be constructed. And
23 so having the construction management that mitigate the
24 difficulties that are temporary are actually important,
25 but I do not believe are appropriately put in and

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1 conditioned.

2 Now I would put out there also in terms of 25,
3 in terms of the construction management committee, that
4 during construction, there are going to be scheduled
5 progress meetings where the school representative, be
6 it their architect and the contractor, are all going to
7 meet during construction. I think in future or maybe
8 in this one, that the ANC wants to say item number one
9 on the progress meeting agenda is going to be community
10 concerns. And every single time you go into that
11 meeting, they're going to have to say are there any
12 community concerns? And they can put them in in
13 writing, they can do it however they want to do it.
14 You have it always in all sort of projects, some of
15 which we've seen here but we didn't get into
16 specificity. If it's a high level secure project, a
17 standing agenda item is security issues, what are
18 security issues? Anyone gotten hurt on the project,
19 any CB that's probably a good way that you don't
20 forget. You always have it addressed. And then
21 there's a place at which you can submit the comments or
22 concerns.

23 Okay. Anything else?

24 MS. MILLER: I just want to clarify CB

25 MR. GRIFFIS: The conditions?

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1 MS. MILLER: Twenty-four.

2 MR. GRIFFIS: Yes.

3 MS. MILLER: We=re basically leaving in the
4 first sentence. Is that correct?

5 MR. GRIFFIS: That=s 24. Yes, ADuring the
6 period of construction when existing campus parking
7 spaces@ CB

8 MS. MILLER: Okay. Can we say, Aperiod of
9 construction or any time when the existing campus
10 parking spaces are limited or unavailable, the school
11 shall provide alternate parking locations and shall
12 fully enforce the school=s existing parking
13 restrictions@, and end it there, also.

14 MR. GRIFFIS: When is a limited condition,
15 unavailable?

16 MS. MILLER: Oh, I don=t know. I=m reading it
17 the way it=s written. What did you say, reduced or
18 unavailable?

19 MR. GRIFFIS: Yes, are reduced.

20 MS. MILLER: Okay. My point is I=m adding the
21 any time, and I=m also stopping at restrictions and not
22 getting into the parking on neighborhood streets.

23 MR. GRIFFIS: Okay.

24 MS. MILLER: Okay.

25 MR. ETHERLY: I mean CB

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1 MS. MILLER: Is that clear?

2 MR. ETHERLY: I think it works fine. I'm just
3 wondering whether or not the CB can't you just simply
4 take out the reference to construction? Because what
5 you're talking about is a situation where at any point,
6 it could be something that ends up reducing or
7 otherwise limiting your parking spaces.

8 MS. MILLER: Right.

9 MR. ETHERLY: And you want to be sure the
10 school provides for that kind of scenario.

11 MS. MILLER: Exactly.

12 MR. ETHERLY: Of course, that would include
13 construction probably, but we don't need to reference
14 it. Then that way it gets you away from CB

15 MS. MILLER: The temporary period.

16 MR. ETHERLY: Exactly.

17 MS. MILLER: Yes, okay.

18 MR. ETHERLY: Exactly.

19 MS. MILLER: Okay. Let's do that.

20 MR. ETHERLY: I'm smiling profusely at you,
21 Mr. Chair, in the hopes that you'll accept that as a
22 friendly amendment to your proposed friendly amendment.

23 MR. GRIFFIS: Okay. Thank you. I think let's
24 all make a note that let's look hard at the wording of
25 24 as review the final order of this. I think the

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1 intent is CB the consensus here for the intent, be it
2 from the ANC, the Applicant, and the Board, so let=s
3 just make sure we don=t create a problem with there
4 isn=t one currently.

5 Okay. Anything else then? We have all of I
6 think 23 or 24 conditions attendant to the application.

7 Are there any other comments on this in terms of
8 conditions, proposed conditions, revisions or edits?
9 Okay. Clearly, this special exception which is before
10 us, we have a motion to approve. It=s been seconded
11 with the conditions now put together.

12 Let me just address very briefly 206. Of
13 course, 206 is what the Applicant has come under. And
14 really the conditions I think evidence all 206.1, 2,
15 and 3, and that is in terms of not being or creating
16 any objectionable elements to the adjoining or nearby
17 properties. And they do go to noise, traffic, number
18 of students, or otherwise objectionable conditions.

19 Obviously, we=ve gone through, I think, and
20 put together a substantial amount based on the evidence
21 and facts in the case, of what those specifics need to
22 be addressed. And I think the conditions have really
23 specified those. The ample parking space be not less
24 than that required in Chapter 21, also is integral to
25 this. Clearly, that=s been met, if not exceeded. But

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1 coming out of that, in order to do that is the
2 construction, which has then set off a few of the other
3 aspects of the conditions on this. Anything else then?

4 Very well. We have a motion before. It has
5 been seconded with all the conditions. I would ask for
6 all those in favor signify by saying aye.

7 (Vote taken.)

8 MR. GRIFFIS: And opposed.

9 MS. BAILEY: Mr. Chairman, before I call the
10 vote, I just wanted to let you know that we do have a
11 proxy vote from Mr. Anthony Hood to approve with such
12 conditions as the Board may impose. The vote,
13 therefore, is recorded as 5-0-0 to approve the
14 application. Mr. Griffis made the motion, Mr. Mann
15 second, Ms. Miller, Mr. Etherly, and Mr. Hood by proxy
16 to approve.

17 Is this a summary order, Mr. Chairman, with
18 the 22 conditions that the Board identified?

19 MR. GRIFFIS: Hardly describes it as summary.
20 Doesn't it have CB but yes, I see no difficulty in
21 issuing a summary order on this, unless any Board
22 Member has any objection.

23 MS. MILLER: I don't have an objection. I
24 just want to make a comment. I don't know. In the
25 summary order, if we could somehow reflect that these

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1 conditions were proffered pretty much by the Applicant
2 and the ANC, or agreed to or something to that effect.

3 I mean, a summary order, sometimes we can add a line
4 or two.

5 MR. GRIFFIS: Well, I don=t see any difficulty
6 with that.

7 MS. MILLER: Okay.

8 MR. GRIFFIS: Very well. Let=s go to 17165
9 then.

10 MS. BAILEY: This is a motion, Mr. Chairman,
11 and it=s for reconsideration of condition to
12 Application 17165 of Public Storage, Inc., pursuant to
13 11 DCMR 3103.2, for a variance from the off-street
14 parking requirements under Subsection 2101.1, and a
15 variance from the loading requirements under Subsection
16 2201.1, to permit the development of a three story
17 self-storage facility in the C-M-! District at premises
18 1600-18 Bladensburg Road, N.E., Square 4273, Lots 3 and
19 4.

20 The Board heard this case on June 8th, and
21 subsequently a decision was made, and the order was
22 issued. The Applicant is requesting that the condition
23 that accompanied this order be modified. And we do
24 have a proxy vote on this, Mr. Chairman, from Mr.
25 Parsons.

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1 MR. GRIFFIS: Excellent. Thank you very much.
2 I=m going to turn this over to Vice Chair, Ms. Miller,
3 as I did not hear this case, so I won=t be deliberating
4 on it.

5 MS. MILLER: Thank you. Ms. Bailey, I=m
6 wondering if you could read Mr. Parson=s comments on
7 the proxy since he=s not here to participate in the
8 deliberations. And I know he had a comment.

9 MS. BAILEY: Sure. AI strongly believe that
10 these signs are part of the variance consideration and
11 that they are detrimental to the public good when seen
12 from public space.@ Did you want me to indicate his
13 vote on this, as well?

14 MS. MILLER: No. Okay. Thank you very much.
15 Okay. This was a case in which we granted a variance
16 for parking and loading requirements, and the Board
17 added a condition limiting signage to ensure no adverse
18 impact on views from the National Arboretum and Mount
19 Olivet Cemetery.

20 As we=ve discussed in the cases that we
21 deliberated on earlier today, we have to be careful
22 with our imposition of conditions. And in this case,
23 Applicants met their burden of proof with respect to
24 making their case for the variance, and in considering
25 the third prong of the variance test, which was

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1 detriment to the public good, this Board was of the
2 view that perhaps all these signs were almost like a
3 visual pollution, and were detrimental.

4 However, upon a reading of the Applicant=s
5 motion for reconsideration, as well as my review of the
6 law on this issue with respect to the other cases we
7 were discussing this morning, including the Georgetown
8 case, I believe we did err. And that number one, there
9 wasn=t a nexus between the condition and the zoning
10 relief requested. And there wasn=t substantial
11 evidence in the record supporting the imposition of the
12 conditions.

13 Basically, the signs are a matter of right.
14 Well, the signs are regulated by DCRA. They=re not
15 regulated by us; so number one, that probably was not
16 within our jurisdiction under the variance test.
17 Sometimes there are some regulations that allow us to
18 look at things like signage, but in looking back at the
19 regulations we were applying in this case, that wasn=t
20 the case.

21 Again, also there wasn=t any evidence in the
22 record that addressed this question. This was
23 something that we came to the conclusion by just
24 looking at the plans. So, therefore, I don=t think
25 that that was fully fleshed out, as well.

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1 I don=t know. If my Board Members have some
2 other opinions on this, feel free to chime in.

3 MR. ETHERLY: Madam Chair, I=m in complete
4 agreement, and prepared to move forward with the
5 motion.

6 MS. MILLER: Okay. Fine. Do you want CB

7 MR. MANN: Yes. I just wanted to say while I
8 fully support the spirit of what Mr. Parsons was trying
9 to accomplish with his condition, I do think that the
10 Applicant makes a compelling argument in their motion
11 for the reconsideration of the condition. And I think
12 that makes it fairly clear where I=m going to go.

13 MS. MILLER: So, the other comment I want to
14 make, and I don=t have the variance test right in front
15 of me, but I=m pretty sure it talks about substantial
16 detriment. And so substantial is a pretty high
17 standard, and we didn=t really have substantial
18 detriment that we needed to correct with this kind of
19 condition.

20 And the last point I want to make is that we
21 come to these things in different ways, and we look at
22 the orders. Sometimes we realize we made an error, and
23 sometimes we have this reconsideration process where
24 for the parties to bring errors to our attention, so at
25 this point then, I think that I will move to grant the

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1 CB wait, let me just get it before me. All right. I
2 would move to grant the motion for reconsideration of
3 condition to Application 17165 of Public Storage, Inc.,
4 pursuant to 11 DCMR 3103.2, for a variance from the
5 off-street parking requirements under Subsection
6 2101.1, and a variance from the loading requirements
7 under Subsection 2201.1, to permit the development of a
8 three-story self-storage facility in the C-M-1 District
9 at premises 100-18 Bladensburg Road, N.E., Square 4273,
10 Lots 3 and 4. And I would suggest that we remove the
11 condition all together, and not have the order
12 conditioned at all.

13 MR. ETHERLY: Second, Madam Chair.

14 MS. MILLER: Any further comments on the
15 motion? All those in favor, say aye.

16 (Vote taken.)

17 MS. MILLER: All those opposed? All those
18 abstaining. And then we have a proxy.

19 MS. BAILEY: Yes, ma'am; and that is, Mr.
20 Parsons has voted to deny the motion. So the vote is
21 recorded as 3-1-1 to approve the motion as requested by
22 the Applicant to remove the condition. The motion was
23 made by Ms. Miller, seconded by Mr. Etherly. Mr. Mann
24 is in agreement, Mr. Griffis did not hear this case,
25 and Mr. Parsons is opposed to the motion.

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1 MS. MILLER: And I would also move that we
2 waive our rules and issue a summary order in this case.

3 MS. BAILEY: A summary order has been issued,
4 so we would be issuing a motion, an order that would be
5 considering this motion.

6 MS. MILLER: That=s right. It would be a
7 summary order granting the motion for reconsideration.

8 MS. BAILEY: Yes, ma=am.

9 MS. MILLER: Okay. Thank you. And then we
10 would be reissuing the order without the condition.
11 Should we do that? Wait a minute. Okay. Let me get
12 this right procedurally.

13 Okay. We just voted on granting the motion
14 for reconsideration.

15 MS. BAILEY: Yes.

16 MS. MILLER: Okay. So then we need one more
17 motion to grant the order without conditions. All
18 right. Do I have a second?

19 MR. ETHERLY: Seconded, Madam Chair.

20 MS. MILLER: Okay. All those in favor say
21 aye.

22 (Vote taken.)

23 MS. MILLER: All those opposed? All those
24 abstaining?

25 Ms. BAILEY: Madam, the Board has voted for

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1 the staff to reissue this order.

2 MS. MILLER: That=s correct, without the
3 condition.

4 MS. BAILEY: Without the condition. Thank
5 you.

6 MR. ETHERLY: And that, of course, would mean
7 that, of course, all the other findings pursuant to the
8 variance inquiry would still stand.

9 MS. BAILEY: Yes, sir.

10 MR. ETHERLY: Terrific. Thank you.

11 MR. GRIFFIS: Is that all clear?

12 MS. BAILEY: Yes, sir. Are we taking a short
13 recess now?

14 MR. GRIFFIS: No. Actually, I=m going to get
15 to one more case, number five, 17177, then we=ll take a
16 lunch break. And then when we return from lunch, we=re
17 going to do the business from the Burke School order,
18 clarification of condition, and then we=ll have 17196,
19 and then seven would be 17175.

20 MS. BAILEY: Application 17177 of Debra Moss
21 and Jerry Crute, pursuant to 11 DCMR 3103.2 for a
22 variance from the lot occupancy requirements under
23 Section 403, a variance from the rear yard requirements
24 under Section 404, and a variance from the non-
25 conforming structure requirements under Subsection

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1 2001.3, to construct a three-story rear addition to an
2 existing single-family row dwelling in the CAP/R-5-B
3 District at premises 304 Maryland Avenue, N.E., Square
4 783, Lot 37.

5 The Board heard this case on July 6th. The
6 Board Members participating were Mr. Griffis, Mrs.
7 Iller, Mr. Etherly, and Ms. Mitten. The case is before
8 the Board for decision at this time.

9 MR. GRIFFIS: Excellent. Thank you very much,
10 Ms. Bailey. That is an excellent summary. Let me also
11 add to that, of course, the Office of Planning was
12 recommending approval. This will be going to the
13 Historic Preservation Review Board and they had started
14 that process. The ANC-6C was also in support.

15 As you remember, we had basically kind of
16 hand-sketched drawings on this for specificity,
17 clarity, and actually and our requirements, we had
18 asked for hardline drawings. Those have been submitted
19 in Exhibit 32. As we look at this, of course, it is
20 for the variance from the rear yard requirement and lot
21 occupancy, and also the relief from 2001.3, which was
22 to construct a three-story CB if you recall, there=s
23 great uniqueness in this in terms of the lot shape
24 configuration, its proximity to the alley close to a
25 corner. It cants pretty dramatically. There also was

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1 the practical difficulty, and the uniqueness of the
2 addition that was done some time ago, the wood addition
3 that their is actually now, which there=s a structural
4 engineer report in there saying it is literally falling
5 apart and should be removed immediately, which removes
6 the kitchen from the house itself.

7 Going through all of that in terms of the lot
8 occupancy, I think that=s well addressed in the Office
9 of Planning=s report, and also in the Applicant=s
10 report in terms of the test. The rear yard requirement
11 goes directly from the shape of the lot itself in order
12 to comply with that. The depth and dimension of it,
13 and how it=s kind of cut-off at the corner as it=s on a
14 square that is somewhat triangular itself. They get
15 odd configurations as they get into the point of the
16 square, which gives it a practical difficulty in
17 providing the entire rear year requirement.

18 The extent of the addition, of course, doesn=t
19 go beyond that which is essentially occupied now;
20 although, there is a deck in it. We had also asked in
21 terms of the FAR calculations how much of the lowest
22 level, which was on the architectural plans listed as a
23 basement. They have calculated that, so it=s now in
24 the record. I don=t want to go into CB well, we=ll
25 take it as their evidence that that=s the FAR that=s

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1 actually in the building.

2 That being said, I do not see any evidence or
3 in my analysis of this in any way that relief of this
4 application would impair the intent of the zone plan,
5 or go against the public good. But let me open it up
6 to others if they have any other comments regarding
7 this.

8 Very well. I would move approval of 17177 for
9 the listed variances, and ask for a second.

10 MR. ETHERLY: Seconded.

11 MR. GRIFFIS: Thank you. In addition to this,
12 of course, the file should note and does note that the
13 Capital Restoration Society had also weighed-in on this
14 and recommended approval. If there=s nothing further,
15 then we have a motion before us that been seconded.
16 All in favor signify by saying aye.

17 (Vote taken.)

18 MR. GRIFFIS: And opposed? Abstaining?

19 MS. BAILEY: Sorry, Mr. Chairman. We do have
20 a proxy vote or absentee ballot from Zoning
21 Commissioner Mitten, and she has voted to approve the
22 application, so the vote is recorded as 4-0-1. The
23 motion made by Mr. Griffis, seconded by Mr. Etherly,
24 Ms. Miller is in support. And also Ms. Mitten has
25 indicated, Mr. Mann did not hear this case and did not

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1 participate.

2 MR. GRIFFIS: Excellent. Were there any
3 comments on the absentee vote from Ms. Mitten?

4 MS. BAILEY: No, sir.

5 MR. GRIFFIS: Okay. Very well. Good. Let us
6 then take a short lunch recess and we will return to
7 the final cases on our agenda this afternoon. I would
8 suggest that we take CB it is 20 of 1 now. We're going
9 to take 60 minutes, and we'll return and finish up the
10 business. Thank you.

11 (Whereupon, the proceedings in the above-
12 entitled matter went off the record at 12:41 p.m. and
13 went back on the record at 2:54 p.m.)

14 MR. GRIFFIS: Very well. Let's resume. We
15 have one business that the Board did put on the agenda
16 this afternoon. Ms. Bailey, I guess it's just for the
17 official nature of it. Why don't you just read the
18 description of the case that we're referring to.

19 MS. BAILEY: This is Application 17022 of
20 Edmund Burke School pursuant to 11 DCMR 3104 for a
21 special exception to allow an addition to an existing
22 private school, and to increase the enrollment from 270
23 to 320 students and faculty/staff to 70, under Section
24 206. The property is located in the R-2 and R-5-D
25 District at premises 4101 Connecticut Avenue, N.W., and

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1 2955 Upton Street, N.W., also known as Square 2243,
2 Lots 67 and 68.

3 There will be further deliberations by the
4 Board on this case, Mr. Chairman.

5 MR. GRIFFIS: Good. Thank you very much, and
6 I think we've brought this into the public realm as one
7 of our last steps in reviewing the final order. And I
8 know we're bringing some clarification to some of the
9 deliberation, and then some of the conditions that are
10 going into our final order. Ms. Miller.

11 MS. MILLER: Mr. Chairman, I think this
12 morning we spent a lot of time discussing conditions
13 and orders, and the legal standards for them. And
14 also, that it's a process in issuing a final order, and
15 that sometimes we may catch things that we determine
16 should be changed in light of the legal standards, and
17 sometimes we don't. And in this case in reviewing the
18 order, it appeared that there were certain conditions
19 that we discussed at our decision-making that may not
20 meet the standards for actually imposing conditions.

21 Two in particular I think were conditions for
22 which there seemed to be unsubstantial evidence in the
23 record to support a finding related to a relative legal
24 zoning standard, and one condition which the Board has
25 no jurisdiction to enforce.

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1 MR. GRIFFIS: Let me interrupt you too. I
2 think that is, in fact, the most substantive foundation
3 of which we will review the order and the conditions,
4 but I wanted to add in this specific case that we're
5 also bringing clarity to what the deliberation and the
6 actual intent of the Board was, so I don't see this as,
7 for instance, changing what we have done based on the
8 fact that we found that legally it couldn't have
9 happened. But there's a clarification with specificity
10 now, obviously, when we write the order, and now we're
11 just bringing it to conclusion so that we can, in fact,
12 issue the order.

13 MS. MILLER: Okay. I would agree with that,
14 and it was a very long deliberation. And so even when
15 some of us read the transcript, we may come out with
16 different conclusions as to whether or not something
17 was a condition or not, so that's why I think it's
18 important here to just clarify that so that the record
19 is clean as to what we intend.

20 MR. GRIFFIS: Good.

21 MS. MILLER: Okay. And looking at the
22 conditions, I also just want to say that the standard,
23 there's got to be a nexus between the condition and the
24 adverse impact that it's addressing, substantial
25 evidence to support the condition, and obviously, it

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1 has to be within our jurisdiction, and tied to the
2 regulation. In this case we were looking at 206.2,
3 which provides that, AA private school shall be located
4 so that it is not likely to become objectionable to
5 adjoining and nearby property because of noise,
6 traffic, number of students, and otherwise
7 objectionable conditions.@

8 Okay. Specifically, the conditions. One
9 dealt with providing food on campus. And this came up
10 at the end of the deliberation, and there was a
11 proposal by the Office of Planning, and the school
12 agreed to do it, if the Board found it desirable. And

13 I=d say in this case there really wasn=t a record
14 established as for a need to do that. We do find in
15 our order that students going off-site to lunch did not
16 create an adverse impact; and, therefore, we didn=t
17 need to mitigate any objectionable conditions
18 associated with that by mandating or imposing any kind
19 of on-campus food. That=s the first one.

20 The second one dealt with traffic. Again,
21 DDOT and Cathy Paterson had made suggestions that the
22 ANC participate in the selection of at least one of the
23 neighborhood members of the enforcement committee.
24 They made suggestions that there by ANC participation,
25 and there was discussion at the deliberation about the

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1 ANC participating in the selection of one of the
2 neighborhood members. And again, that=s a condition
3 where I think there is even disagreement whether or not
4 the Board adopted that, but I think we should clarify,
5 or I think the Board is of the view that we=re not
6 going to interfere with the agreement between Burke and
7 the immediate neighbors without substantial evidence
8 justifying our interference there. They would be free
9 to involve the ANC in the selection of the neighborhood
10 members, but we would not be imposing that upon them as
11 a condition.

12 And the third condition that was discussed was
13 the school fully implementing and complying with a
14 construction management plan, and I think it=s the view
15 of this Board that construction management plans are
16 important, and they=re of great concern to the
17 community, but they=re not something that this Board
18 has jurisdiction to enforce. And so, therefore, that
19 also will not be a condition in the order. So that=s
20 how I see it. If other people have comments?

21 MR. GRIFFIS: Very well. I actually agree
22 with the comments that you stated, and I think that
23 directly and factually represents if not the specific
24 deliberation, certainly the intent of the deliberation
25 and the outcome of that. There was a lot of stuff, and

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1 you indicated that the deliberation on this was
2 extensive. And oftentimes, a Board Member might give
3 comment to things, and as we get on to the five or six
4 hundred conditions on an order, we may, in fact, lose
5 track of how many are actually going in as conditions,
6 or as mere statements, or findings, or one=s own
7 impression or conclusions from their own deliberation.

8 This I think absolutely clarifies some of the aspects
9 as you=ve indicated that will clearly be reflected in
10 the order. Some are findings of fact, some may not be.

11 Some are exhibits, evidence in the record, but none of
12 these elements will, in fact, be conditions in the
13 final order which we have now read, re-read, reviewed
14 and I think crafted very well based on OAG=s excellent
15 writing of it.

16 So is there anything else, any other comments
17 on those issues? Yes, Ms. Miller.

18 MS. MILLER: No, I was going to say we could
19 move to affirm the order as written, and as we=ve
20 reviewed it without the conditions.

21 MR. GRIFFIS: I would second that. Any
22 further deliberation on that? Very well. This may be
23 the first and only time the BZA has done a motion on
24 that, and I think it is well-positioned to do so. And
25 this will be the last stage, which means the order will

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1 finally be issued.

2 There it is. We have a motion before us. All
3 those in favor signify by saying aye.

4 (Vote taken.)

5 MR. GRIFFIS: And opposed?

6 MS. BAILEY: Mr. Chairman, we have a proxy
7 vote or absentee ballot vote from Mr. Hood to approve
8 with conditions as the Board may impose. Therefore,
9 the vote is 4-0-1 to approve or to affirm the order
10 without the conditions, as indicated. Ms. Miller made
11 the motion. Mr. Griffis second, Mr. Etherly, and
12 again, Mr. Hood are in support. Mr. Zaidain sat on
13 this case, and he did not participate in these
14 deliberations.

15 MR. GRIFFIS: Good. Thank you very much. I
16 think this goes to reinforce the fact of how
17 transparent a lot of the stuff that we do. I mean,
18 there=s a lot of what has to happen that doesn=t happen
19 directly here taking up the public=s time, and
20 inputting, editing, reviewing major orders is what we
21 end up spending a lot of time on. And to come out
22 here, which I think is an excellent idea, to make
23 clarifications of what we=ve done, so that I don=t
24 think any of us would have been surprised when we
25 issued the order. And for us to take the time to do

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1 that, I think was an excellent decision.

2 So let=s move on then to the last two items of
3 business for the Board this afternoon. I believe we
4 have Application 17196 to go through at this time.

5 MS. BAILEY: Yes, sir. And that application
6 is of Sam Daley-Harris, pursuant to 11 DCMR 3104.1, for
7 a special exception to allow a two-story rear addition
8 and porch to an existing flat under Section 223, not
9 meeting the lot occupancy requirements under Section
10 403, side yard requirements under Section 405, court
11 requirements under Section 406, and non-conforming
12 structure provisions under Subsection 2001.3. The
13 property is located in the R-4 District at premises 707
14 East Capitol Street, S.E., also known as Square 898,
15 Lot 27.

16 The Board heard this case on July 20th.
17 Participating Members are Mr. Griffis, Ms. Miller, Mr.
18 Mann and Mr. Hood. And this case is now before the
19 Board for a decision.

20 MR. GRIFFIS: Excellent. Thank you very much.

21 Ms. Bailey has adequately indicated, we do have the
22 special exception 223 before us. And the reason why we
23 set this off, I know the Board is well-aware of it, but
24 the fact of the matter that 222 goes for the single-
25 family dwellings.

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1 The history, as it has come up, actually holds
2 a Certificate of Occupancy for three units, which sets
3 it outside of that realm. And we had given some time
4 in order for the Applicant to provide us with a C of O
5 for those units.

6 They have given a message to the Board to the
7 Office of Zoning Staff that they had put in for that.
8 DCRA has not issued that yet, based on the fact that
9 they require further documentation.

10 The testimony on the record at this point, as
11 you recall, the Applicant had indicated that this is a
12 flat, single-family flat, and has been I think that
13 they indicated since they've owned it. And their
14 intent and purpose is not to change that.

15 I would suggest this. First of all, for the
16 223, we can run through some CB well, actually, I think
17 the record holds that it has met the burden for the
18 special exception. The Office of Planning had
19 recommended approval conditioned on the fact of the C
20 of O for a flat is secured, and I think their report
21 was excellent, and supporting the application. ANC-6B
22 also was in support, not to mention they had letters of
23 support from Capitol Restoration Society, and no less
24 than five adjacent and surrounding community members.

25 This really even rose to the level of CB no,

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1 this one didn't. But it's clear they make the special
2 exception case. I mean, we had one, actually it was
3 the same day which we dealt with this morning. But
4 this clearly makes the CB it certainly wouldn't detract
5 from light and air of the adjacent properties.

6 The Office of Planning had also indicated the
7 four foot setback, which I think we briefly discussed
8 during the course of this, and accessing for
9 maintenance on the addition. Of course, the main
10 portion of the building, in fact, lands on the property
11 line, so that CB you don't have the four foot dimension
12 to access for maintenance.

13 Really what's happening here, it would be the
14 back porch area, and there is a space between the
15 property line and that, that would allow, I think, the
16 frankly small area that would need to be accessed, and
17 so I don't see a big issue with that.

18 So I suggest we move ahead in this fashion.
19 First of all, as a special exception would only go for
20 a flat, they would obviously have to secure a
21 Certificate of Occupancy for the flat prior to pulling
22 a permit for the work on this. In which case, it's
23 somewhat out of our hands, but rather in DCRA's in
24 processing this.

25 The Applicant has given indication that

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1 they=re pursuing it, so I would imagine it will come
2 in. So with that said, I would move approval of
3 Application 17196 for the special exception to allow
4 the two-story addition of the porch to the existing
5 flat. Actually, I won=t even say existing porch.
6 Well, it is existing flat, two-family row dwelling
7 under Section 223 not meeting the lot occupancy
8 requirements, side yard requirements, and non-
9 conforming structure provisions at 707 East Capitol
10 Street, S.E., and ask for a second.

11 MS. MILLER: Second.

12 MR. GRIFFIS: Thank you. Is there any further
13 discussion, deliberation we need on this? I=ll open it
14 up to anybody. Okay. I would imagine as is indicated,
15 this is also going to the Historic Preservation Office,
16 and I think probably by the time they go through that,
17 the Certificate of Occupancy will be in, but I don=t
18 think we need to keep the record open, or even have it
19 submitted into the Office of Zoning. But they will
20 know that this would obviously not be usable without
21 that. So we have a motion before us that=s been
22 seconded. I=d ask all those in favor signify by saying
23 aye.

24 (Vote taken.)

25 MR. GRIFFIS: And opposed?

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1 Ms. BAILEY: Mr. Chairman, we have a proxy
2 vote from Mr. Hood to approve the application.
3 Therefore, the vote is recorded as 4-0-1 to approve.
4 Mr. Griffis made the motion, Ms. Miller second, Mr.
5 Mann and Mr. Hood are in support, and Mr. Etherly did
6 not hear this case.

7 MR. GRIFFIS: Thank you very much.

8 MS. BAILEY: The last case, Mr. Chairman?

9 MR. GRIFFIS: Yes. Thank you very much.

10 MS. BAILEY: And that is Application 17175 of
11 Douglas Development Corporation/Jemal=s Wheel, LLC,
12 pursuant to 11 DCMR 3104.1, for a special exception
13 from the roof structure requirements under Section 411,
14 and a special exception to increase the building height
15 to 50 feet pursuant to Section 1402, and pursuant to 11
16 DCMR 3103.2, variances from the lot occupancy
17 requirements under Section 772, the residential
18 recreation space requirements under Subsection 773.7,
19 the side yard requirements under Subsections 775.7 and
20 2001.3, and the parking aisle width requirements under
21 Subsection 2117.5, to permit the development of a four-
22 story apartment house in the RC/C-2-B District at
23 premises known as 1701 Kalorama Road, N.W., Square
24 2566, Lot 90.

25 The Board heard this case on June 29th, 2004,

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1 and it comes before the Board for decision at this
2 time.

3 MR. GRIFFIS: Good. Thank you very much, Ms.
4 Bailey. And not to throw everything off, but I did
5 want to indicate that we were going to issue a summary
6 order for the last case, and waive our requirements for
7 a full order on that.

8 Now moving ahead to the case that is before
9 us, I want to start off, first of all, talking about
10 the variance from the parking aisle width requirement
11 under 2117.5. I think that was very straightforwardly
12 put. We have the existing structure and the column,
13 and the difficulty in terms of the aisle, was that it
14 wouldn't meet obviously the base dimensional
15 requirement. And as you recall, it really wasn't as
16 bad as it actually came out, as it was CB well, I
17 should say, it wasn't as bad as I thought it was
18 originally. But rather, there's a few points at which
19 a column eats into the overall dimension, so it's not
20 as if the entire drive aisle is diminished, but there
21 are points at which there will be small areas that
22 would be choked down, let's say.

23 But that doesn't go, necessarily, to the test
24 fully, but clearly, we have the uniqueness of the
25 existing structure in looking at the drive aisle

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1 variance. The existing structure and its structural
2 members, the columns itself. There is the existing
3 parking area, garage door access and opening, and as
4 you lay out the parking requirement, essentially
5 nothing is substantively changing in terms of the
6 structure, which is actually lending itself to its
7 practical difficulty.

8 The uniqueness I=d skip over very quickly,
9 because the uniqueness also is present in the existence
10 of the building, and also in terms of its shape, its
11 prior use, all of which goes into the difficulty that=s
12 created, and whether it would impair the intent and
13 integrity of the zone plan and the public good. It
14 certainly does not. I think the variance test for the
15 parking aisle is strongly met.

16 The variance from the side yard requirements,
17 likewise, in 775, and also 2001.3, I think is very well
18 set-out, and also substantiated in the Office of
19 Planning=s report. Not going into all the aspects of
20 those, but clearly it=s going to the angle of the site
21 itself, the existence of the building, and then the
22 prior use, the adaptive use of this. Lot occupancy
23 under 772, similarly.

24 Now let=s go to the special exception in
25 1402.1. Chapter 1400, of course, is the Reed-Cooke

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1 Overlay. The Reed-Cooke Overlay is more restrictive in
2 terms of several aspects, height it what we're talking
3 about here. And in order to have additional height,
4 there are certain provisions that would need to be met,
5 and that is the affordable unit component. 1402.1, the
6 maximum height permitted in the RC Overlay shall not
7 exceed 40 feet plus roof structure, as defined in the
8 title, provided that RC/C-2-B Overlay District C the
9 BZA may approve the maximum height of 50 feet with
10 appropriate setbacks from the street, plus roof
11 structures, subject to determination the project will
12 provide for the on-site construction or substantial
13 rehabilitation of low and moderate income household
14 units.

15 The record is full that that requirement is
16 actually met for us to look at, and I think support the
17 additional height under 1402. As you recall, the
18 community had come in saying don't put all the
19 affordable units in the basement or however they
20 defined it, but the lowest level. The Applicant had
21 indicated they were going to try and move about the
22 location of units. I'm not sure how far we tread into
23 that, but rather our regulations say that they have to
24 provide them, and so the evidence shows that, in fact,
25 they are being provided.

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1 Special exception in 411 for the roof
2 structures; we have several things attendant to that.
3 I think for clarity=s sake, what ends up really
4 wrapping together is the variance from the residential
5 rec requirements and the roof structure requirements,
6 because, let me say it in a nutshell, as the
7 residential rec is accommodated on the roof upwards of
8 9,455 square feet, clearly two stair towers are
9 required, in which case, one of the stair towers based
10 on the separation where it=s following in the existing
11 building below, will not have the proper setback of
12 one-to-one. It will also create two structures, and it
13 also creates differing heights. So there=s several
14 provisions under 411 that aren=t met, that can get
15 covered with a special exception; that is, if the
16 residential rec space is fully provided on the roof.
17 However, we do have a request for variance which would
18 allow relief from the residential recreation space.

19 Now there was an awful lot of discussion and
20 iteration on this, and how much residential rec was to
21 be provided, if any, at all. And let see if I can walk
22 through this a little bit.

23 First of all, as you increase the occupancy of
24 that roof, of course, there is CB well, let me start
25 with the big picture. As proposed in A09 of June 3,

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1 2004, which is the date on the drawings that we have
2 roof plans, we have a 9,455 square foot residential rec
3 area. There=s a small portion of which would have to
4 have relief from the 25 foot dimensional requirement,
5 as far as I read this application, because the overall
6 dimension on the roof in this really looks for even
7 probably the average, but the dimensions that we have
8 shown are 42 feet 7 inches, 42 feet 6 inches, and that
9 looks at a very consistent width all the way down on
10 the deck, or could at least be that. And, of course,
11 the plan has noted that it doesn=t CB the final
12 configuration or exact configuration. They=re showing
13 9,455 square feet.

14 As you recall, that would provide by building
15 code and occupancy, over 600 folks or whatever it is,
16 but it=s hundreds of people, in the 600 range. That
17 does a couple of things. First of all, it starts to
18 increase the dimension of the stairs for egress to get
19 all those people off the roof, which seems to CB I
20 think is a straightforward and very easy to understand
21 practical difficulty. You have 48 units in this
22 building - I think that=s the right number - and you
23 have a stair that=s sized for the proper egress for
24 building code for those units. And now you go to the
25 deck which is going to serve the 48 units, but based on

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1 the fact of the square footage and the occupancy that
2 would have to be calculated for it, your stairs have to
3 be three times as wide.

4 Well, if not flying with common sense,
5 certainly I think directly goes to the practical
6 difficulty. Obviously, the uniqueness is arising
7 consistently from similar aspects. One being the
8 existing structure, which is a unique aspect. The
9 practical difficulty that arises with that is one, the
10 configuration of the units and their odd sizes, and
11 they actually have testified they're larger than normal
12 or one would want to make in the standard new building
13 residential, and why is that important and such?

14 Well, it does go to the utilization of this
15 odd-shaped building, the existing structure. Where you
16 start carving out spaces in the structure for your core
17 and your stairs, now going to residential, you have to
18 separate your stairs. Well, now going up to the roof
19 and having this occupancy load so high, and your stairs
20 getting so much larger seems to me, I think it does
21 rise to the practical difficulty.

22 So the next step was, the Applicant also
23 indicated that this was, or could well be classified as
24 an A3 use category, an A3 assembly, and they have some
25 exhibits that they've sent in regarding that aspect.

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1 I'm not persuaded by, frankly, the information that has
2 been submitted in terms of classifying this as an A3.
3 I think it's difficult for me to understand this as
4 having its own use classification, let alone the A3
5 classification.

6 They've submitted into the record the current
7 building code, and also the current building code
8 commentary, and let me just say it's not persuasive. I
9 think a reading of the commentary and the code would
10 move one to go to an A5, if there was a separate use
11 classification given to begin with. If this was an
12 accessory area for a residential, it would probably be
13 more appropriate for building code permits, but it
14 steps into a more difficult position for us because
15 we're not code officials. The code is not something
16 under our purview. But as it was offered, as
17 essentially the practical difficulty of what would have
18 to happen to the entire building as its use category
19 was changed; and, therefore, the fire rating of the
20 entire structure would have to be changed, we obviously
21 delved into that.

22 I think there's a strong enough reasoning to
23 reduce the residential recreation space which can be
24 provided on the roof. And let me also say that they've
25 really maximized the areas outdoors that they can, and

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1 it=s really the roof. And there isn=t any other
2 outdoor area to try and provide it. Providing it
3 inside also as indicated, was fairly problematic. And
4 so we=re left with that.

5 Do you resize these huge stairs for an
6 occupancy that kind of blows out of proportion what
7 actually is going to be reality. Now there are several
8 steps that we talked about in this application, and
9 that was well, get a building code waiver, and have it
10 posted for occupancy and all that. I still think it=s
11 a fairly viable solution to maximize the roof area, but
12 I have great hesitation in doing that, because that
13 makes our decision reliant on a building code official
14 review and approval of a building code waiver, and
15 there=s a lot of unknowns out there. And I don=t want
16 us to be putting pressure on building code issues if,
17 in fact, they actually shouldn=t be done.

18 However, I=m more persuaded, and I think CB
19 well, let me put it this way. I think the opportunity
20 to provide the residential rec space on the roof is a
21 good one, and that if it was provided to the extent of
22 which the existing size stairs CB I mean, as I say, the
23 size stairs for the building as they will be
24 constructed to the roof, if the deck was maximized to
25 the level of which would be accommodated by the size of

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1 the stairs, I think it would start to satisfy not only
2 the intent of the residential rec, but it satisfies,
3 and frankly, that=s where I see their practical
4 difficulty ending, is based on that. In terms of
5 bringing the elevator access to the roof to get to
6 that, I understand the concern about that, and there=s
7 certainly issues involved with that, but I don=t think
8 it rises in this specific case to creating a practical
9 difficulty of providing residential rec in order to
10 grant the variance. And that=s where I am with it. So
11 let me open to others if they have any other comments.
12 Otherwise, we=ll keep going.

13 MS. MILLER: All right. I just want to
14 comment that it=s the Applicant=s burden to make its
15 case for the variance relief. And I don=t think they
16 made a very good case here, at least the discussion
17 about the stairways came out at the hearing, so I
18 gather that that convinced some of my Board Members.
19 And I could go along with that, but when I look back to
20 try to review and assess the variance relief requested
21 with respect to the roof, I mean, it appeared to me
22 that in their application itself, there was little
23 discussion as to what the building code required them
24 to seek a reduction. They asked for a reduction down
25 to the amount to accommodate an occupancy load of 49

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1 people in their application, and it=s not supported.

2 And also, we don=t have a chance to get Office
3 of Planning=s input, except for what they may have said
4 at the hearing. Their report was geared towards the
5 variance related to the 25 feet dimension, and not to a
6 reduction based on occupancy, or even stairs. So I
7 think that=s what=s been troubling me in this case.

8 MR. MANN: Yes. I don=t think there=s much
9 that I can add. I agree also. I am often not
10 convinced about the need to classify the roof
11 separately from the rest of the structure, and thereby
12 driving the residential requirements kind of backwards
13 in this case in a way that would decrease that space.

14 MR. GRIFFIS: Very well. Anything else? Ms.
15 Miller, let me try and help you in terms of what I
16 understand what the argument was for the practical
17 difficulty based on the building code and assembly.

18 First of all, 49 is a critical number. The
19 minute it goes to 50, it can be classified as an
20 assembly space, be it a room, be it anything. Section
21 303, Assembly Group A - reads, AAssembly Group A
22 occupancy includes among others the use of a building
23 structure or portion thereof for the gathering together
24 of persons for purposes, such as civic, social,
25 religious functions@, yaddy yaddy yaddah. The critical

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1 piece is Aa room or space used for assembly purposes by
2 less than 50 persons, and accessory to another
3 occupancy shall be included as part of that occupancy.

4 Assembly occupancy shall include the following@,
5 meaning anything less than 50 goes to whatever is the
6 primary occupancy. Although there=s a lot of
7 information in that, but that=s where the critical
8 aspect of the number 49 and 50, there=s a threshold
9 there.

10 So then what was being presented to the Board
11 was well, as you look at it, then we=re above 50,
12 because the occupancy anything above 750 or whatever
13 they=re proposing would make it allowable for occupancy
14 of more than 49 people. We are an A3, which is
15 assembly uses intended for worship, recreation or
16 amusement, or other assembly uses not classified
17 elsewhere in Group A. And they include a whole list
18 under Section 303, all of which I=ll note are enclosed
19 and indoors.

20 A-5, although there is an operative word in A-
21 3 which says Arecreation@, A-5 is used for assembly
22 uses intended for participation in or viewing outdoor
23 activities, so there=s a lot of room for
24 interpretation, and wondering, and head-scratching as
25 you read those two in Section 303 of the building code.

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1 Now the Applicant did, of course, go beyond
2 and say well, we also looked at the official code
3 commentary, and the code commentary is an excellent
4 place to go, because that=s where they actually tell
5 you what it is that the code actually says in somewhat
6 plainer English. And I think there=s some disagreement
7 whether it would fit into an A3/A5, or whether it would
8 have to have its own stand-alone use classification.
9 But just for clarity, the Applicant has put in that it
10 was an A3. Again, I would note that A3, even in the
11 commentary, goes to describe indoor spaces, frequently
12 CB and they indicate if CB well, A5 then goes to
13 occupancies including Group A5, are identified in this
14 section.

15 A Structures classified in A Group A5 are
16 outdoor facilities, where people assemble to review or
17 participate in social and recreational activities.@
18 The critical defining aspect of A5 is, how does smoke
19 evacuate? And if smoke can easily and freely evacuate
20 from an area, that obviously would not be enclosed by
21 walls or a roof, it would be classified an A5.

22 A3 is a higher standard. It=s a very high
23 standard in terms of use, and in terms of the
24 restrictions on the building and the fire rating. I
25 don=t think the Board wants to make a judgment on what

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1 it is. I think it=s for their code officials. They
2 did have their specialist indicate that it was an A3.
3 They said that they had a very brief conversation with
4 the building code representative, and immediately
5 without thought told them it was A3. I would have
6 hoped for a more lengthy thought process on it, but be
7 that as it may, I don=t CB my point in full clarity, I
8 think I absolutely want to stay away from deciding a
9 use category. But I can say, I=m not persuaded by the
10 fact that this would be an A3 use category.

11 Well, there it is. But I am strongly
12 persuaded CB so, all right. So that=s where I was. We
13 have the assembly aspect argument of it. Now we still
14 have building code practical difficulties, and then it
15 goes just to the stairs, and the size of the stairs,
16 and whether they become so large to accommodate a roof
17 deck, rather than really to be setting up for the
18 requirement for egressing the entire building.

19 Those are the two essential aspects of how the
20 building code is being used in this zoning variance
21 case. So I think it=s a stronger position to stay in.

22 My position is this; I think they meet the test for
23 the variance based on the practical difficulty of not
24 having to oversize the stairs. So taking it logically
25 then, you would maintain the stairs as they are

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1 proposed in order to be code complain. And then the
2 size of the deck would be proportionate to that.

3 If I recall, that would set up, I believe it
4 was roughly 4,000 square foot deck, which is
5 essentially half the size of what=s happening here.
6 And I think that would CB it certainly wouldn=t go
7 against the intent and integrity of the zone plan.
8 There is a provision of it, and certainly wouldn=t go
9 against the public good. And I would think
10 specifically in terms of the public good and also the
11 zone plan, you know my normal litany on residential rec
12 space. But here, even in addition, which we=ve seen
13 now a couple of times. We have very limited unit
14 numbers in a lot of these conversions of buildings, and
15 yet the percentage of the square footage used for
16 residential is substantial. Right? So you have the
17 percentage that=s required for residential rec. It
18 seems to be kind of becoming disproportionate of how
19 much square footage we=re having required for the
20 limited number of units in the building. Which again,
21 and I said it during the hearing, I=m wondering why
22 they don=t provide private terraces up on this piece,
23 because it seems to be a heck of a nice amenity, but
24 that=s not our business. So provision of a deck that
25 is perhaps half the size is what we=re looking at here

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1 in terms of the 9,000. I think it certainly meets the
2 uniqueness, practical difficulty, and doesn't impair
3 safety or the common good. Yes.

4 MS. MILLER: I'm wondering if you could just
5 elaborate on what you mean by maintaining the stairs so
6 they're code compliant. I mean, what part of the code
7 are they going to be compliant with?

8 MR. GRIFFIS: The good part.

9 MS. MILLER: This is going to drive the size
10 of the roof deck, I believe.

11 MR. GRIFFIS: Right. The code is going to
12 tell them exactly what the stairs is going to be, based
13 on the occupancy of the building. And then there's a
14 minimum. I imagine they're going to hit a minimum of
15 stair size, but that minimum of that dimension allows a
16 certain amount of occupancy, which is well above what
17 it will actually be for CB let me throw a number so it
18 makes it a little bit more specific. The minimum
19 you're going to be able to provide is let's say 50
20 inches. Okay? Okay. We're going to say it's 48, but
21 just to make it clear. So 50 inches are your stairs,
22 that size, but that size of stair accommodates a
23 certain occupancy. That occupancy will go up and be
24 translated into the dimension of the roof terrace.
25 Does that make sense? Code compliance of the stairs is

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1 going to be based on the 48-unit building which they=re
2 going to provide. Then they=re going to run them up to
3 the roof, and the deck is going to get no larger than
4 it would be to be accommodated by a code compliant
5 stair.

6 MS. MILLER: Okay.

7 MR. GRIFFIS: It=s actually an interesting
8 point that you brought up, because they could always
9 make the stairs code compliant, so it=s a good
10 clarification. Hopefully, I did it.

11 MS. MILLER: Okay.

12 MR. GRIFFIS: Okay. What else?

13 MR. MANN: Well, that takes us to the
14 structures on the roof then. Right?

15 MR. GRIFFIS: Yes. Oh, right. Did you want
16 to go into that?

17 MR. MANN: Well, it sounds like we=re agreed
18 on what we think the minimum roof deck size should be.

19 And so in that case then, there=s going to be
20 structures on the roof from which they need a special
21 exception.

22 MR. GRIFFIS: Good. Right. And the special
23 exception under 411, of course, then would go to the
24 two separate structures differing height, and not
25 having the setback of one-to-one on the one stair

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1 structure. I think a special exception for that is
2 easily understandable, and meets clearly the test for
3 special exception under 411.

4 The special exception under 411 says where it
5 becomes impractical to meet all these requirements,
6 essentially. You know, where we find that it can=t be
7 done. And it clearly can=t be done. We need the stair
8 separation, and the minute you start connecting into
9 one enclosure, both stairs, then we=re actually CB
10 we=re going against the intent and use. But certainly,
11 the intent of the Reed-Cooke Overlay, which is trying
12 to minimize massing and height. As you break that up,
13 and actually we=ve seen this in a couple of cases, as
14 you break that mass up, obviously the impact is
15 positive.

16 I believe also, the fact that the differing
17 heights were also going to be utilized as the stair,
18 the actual area of walkout, and then the elevator may
19 well be of differing heights. I think that is also
20 appropriate to be approved under the special exception,
21 because I think it will help better animate those
22 penthouses, and minimize any visual impact. And that=s
23 actually the direct intent of 411, is to make
24 penthouses not visual intrusions.

25 Okay. What else?

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1 MS. MILLER: Well, with respect to the 25-foot
2 dimension variance, Office of Planning in their report
3 seems to refer to the many angles of the roof. And
4 when we were looking at the roof, I didn't necessarily
5 see the many angles, but we saw one area. I don't see
6 a problem with granting that relief. But it's CB

7 MR. MANN: But we don't know if that relief is
8 now required, because that was relief from when the
9 deck was 9,000 something square feet. So if the deck
10 is going to be sized differently, then we don't
11 necessarily know whether or not it meets the 25-foot
12 minimum requirement; although, we could probably assume
13 that it could.

14 MS. MILLER: Well, OP says that, AThe subject
15 roof is uniquely shaped, having many angles that
16 otherwise would not exist on a typical building.@

17 MR. GRIFFIS: I think I would totally agree
18 with that.

19 MS. MILLER: You would. Okay.

20 MR. GRIFFIS: Yes. Except that doesn't impact
21 the 25-foot dimension at all. I think Mr. Mann says it
22 correctly, and the fact is, yes, if you had to try and
23 provide 9,455 square feet up there, you're going to run
24 into difficulty in terms of the angles. I mean, we're
25 showing an area right here that doesn't meet - which

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1 is, I say right here, but it=s on the planned southern
2 portion of the little nova out here. And this says the
3 final configuration was to be determined. I imagine
4 they were probably anticipating that at some point -
5 for instance, if you decked into the point - this kind
6 of triangulates into here. If you made this part of
7 the deck in the triangle part, at some point towards
8 the edge, you=re going to get the angles of which your
9 dimension is going to be less than 25. But where they
10 have located their stairs, if they pulled the deck out
11 that connected the two stairs into a dimension not less
12 than 25 feet to accommodate the required square
13 footage, I don=t see them running into difficulty with
14 the 25-foot dimension.

15 MR. MANN: What if we assumed that was the
16 scenario. Well, I don=t know. I guess we don=t want
17 to get into hypothetical snazz though. We don=t want
18 to grant that sort of relief from something if we don=t
19 know that it=s necessary.

20 MR. GRIFFIS: What=s the practical difficulty
21 for meeting the 25-foot dimension?

22 MR. MANN: I guess there wouldn=t be one under
23 the new deck scenario.

24 MS. MILLER: I mean, I think we can move on.
25 And I think that argument goes to they can=t provide

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1 the 9,455 square feet without running into problems
2 with the 25 feet. Now that that area is going to be
3 reduced, then there is CB we don=t know that they can=t
4 meet it without running into the problem.

5 MR. GRIFFIS: Good. Anything else then? I
6 can do that. Very well. Let=s continue our
7 deliberation then under some action here. And I would
8 move approval of 17175 for Jemal=s Wheel, LLC on behalf
9 of FCD Development, LLC. This is for 1701 Kalorama
10 Road, N.W., and that is for the special exception of
11 the roof structure requirements 411, as has been
12 described by the Board. Special exception to increase
13 the proposed building height to 50 feet pursuant to
14 1402.1, variance from the lot occupancy requirements in
15 772.1, variance from the residential rec space
16 requirement, 773.7 as outlined by the Board, and a
17 variance from the side yard requirements, and a
18 variance from the parking aisle with requirements. I
19 would ask for a second.

20 MR. MANN: Second.

21 MR. GRIFFIS: Thank you, Mr. Mann. I think we
22 have really fully discussed all of the various aspects
23 of this. Clearly, the residential rec was the most
24 cumbersome in terms of, first of all, the numerous
25 options that were attendant to it, but also how one

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1 related so integrally to other relief that may or may
2 not have been needed and required. The majority of the
3 variances and the others I think are
4 straightforwardly put based on the massing, existing
5 unique shape, and unique location of the building that
6 created the practical difficulty in fully complying
7 with the regulations. And certainly, it wouldn't
8 impair the integrity and intent of the zone plan. Yes,
9 Ms. Miller.

10 MS. MILLER: Well, I think I will be offering
11 a friendly amendment, but to explain - I don't think
12 we're granting a variance from 773.7, which was the 25-
13 feet.

14 MR. GRIFFIS: Oh, I'm sorry. Did I say 7?

15 MS. MILLER: Yes. But that's what they asked
16 for, at least in the original application. But I think
17 we are granting a variance - and you probably should
18 look at this - 773.3, the reduction in the space
19 devoted to residential use, as it will be reduced by
20 the number dictated by the stairs.

21 MR. GRIFFIS: Right. Yes, 773.3. Good.
22 Okay.

23 MS. MILLER: Okay.

24 MR. GRIFFIS: Anything else? Very well. We
25 have a motion before us. I'm going to ask for all

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1 those in favor signify by saying aye.

2 (Vote taken.)

3 MR. GRIFFIS: And opposed?

4 MS. BAILEY: The vote is recorded as 3-0-2 to
5 approve the application as outlined by the Board.
6 Motion made by Mr. Griffis, seconded by Mr. Mann. Ms.
7 Miller is in support, Mr. Etherly, and the Zoning
8 Commission Members are not present today. Variance
9 relief was not granted under Section 773.7; however, it
10 was granted under Section 773.2.

11 MR. GRIFFIS: Yes, 773.3.

12 MS. BAILEY: 773.3.

13 MR. GRIFFIS: Excellent. The percentage is a
14 requirement, of which I don=t CB yes, excellent. Thank
15 you very much. Anything else then?

16 MS. BAILEY: Just wishing everyone a very
17 pleasant time off while you=re on recess.

18 MR. GRIFFIS: Thank you very much. And
19 absolutely a very CB the same to all of Office of
20 Zoning, and also the Attorney General=s Office. Of
21 course, for us, time off here means more time at work.
22 But nonetheless, we will enjoy our break from
23 reviewing all of these applications, and look forward
24 to getting back into business in September.

25 So if there=s nothing further, then we can

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1 adjourn the Public Meeting of the 3rd of August, 2004.
2 Oh, right. That=s an interesting point. We don=t have
3 any opposition in this, is that correct? We have the
4 support of the Office of Planning. We also have the
5 support of ANC in this, but we denied an aspect of it.

6
7 MS. BAILEY: Mr. Sher is in the audience, and
8 what did you say, Mr. Sher?

9 MR. GRIFFIS: I mean, the issue is that we
10 didn=t actually deny, because we just changed the
11 aspect of which we=ve approved. I mean, none of the
12 variances were denied, even the residential recreation.

13 It was just a reduction, one, of the amount requested,
14 although there were options requested, and there was a
15 different aspect within the same fraction.

16 Well, here=s the situation. I don=t see any
17 difficulty in issuing a summary order on this with the
18 waiver regulations. If in fact we look at it and find
19 out we want to do a full order, there=s nothing that
20 precludes us from doing that. Is that correct?

21 MS. MILLER: I just want to comment also, I
22 think the part that we denied, we only denied because
23 we found it probably wasn=t necessary, or we didn=t
24 know if it was necessary, which is a difference, I
25 think, in going against CB

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1 MR. GRIFFIS: Right. In terms of the
2 conventional requirements.

3 MS. MILLER: Yes. We didn=t really do them.
4 Yes.

5 MR. GRIFFIS: Right. Okay. Who wants to have
6 a denial, we=ll call it something else. Okay. So
7 there it is then. I think we have great clarity in our
8 confusion. That=s not a bad word to end on. We can
9 adjourn then the 3rd of August, 2004.

10 (Whereupon, the proceedings in the above-
11 entitled matter went off the record at 3:48 p.m.)
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